CLERK'S COP

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 358

INTERSTATE TRANSIT, INC., APPELLANT,

vs.

DICK LINDSEY, COUNTY COURT CLERK

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

FILED AUGUST 18, 1930

(35,280)

(35,280)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930

No. 358

INTERSTATE TRANSIT, INC., APPELLANT,

vs.

DICK LINDSEY, COUNTY COURT CLERK

APPEAL FROM THE SUPREME COURT OF THE STATE OF TENNESSEE

INDEX.

	Original	Print
Proceedings in supreme court of Tennessee	1	1
Caption (omitted in printing)	1	
Record from chancery court of Davidson County	3	1
Bill of complaint	3	1
Answer	20	9
Stipulation of facts	27	13
Decree	30	14
Statement of case and assignments of error	34	16
Opinion, Chambliss, J	40	20
Decree	50	27
Petition for appeal and order allowing same	51	27
Assignments of error	66	37
Order allowing appeal	69	39
Writ of error (omitted in printing)	70	
Præcipe for transcript of record (" " ")	72	
Bond on appeal (" " ")	75	
Citation and service (" " ")	77	
Clerk's certificate (" " ")	79	
Judge's certificate (" " ")	80	
Clerk's certificate to judge (" " ")	81	
Statement of points to be relied upon and designation of parts of record to be printed	82	39
Designation of additional parts of record to be printed	90	42

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOVEMBER 25, 1930

[fols. 1 & 2] [Caption omitted]

[fol. 3] IN CHANCERY COURT OF DAVIDSON COUNTY, PART ONE

Rule No. 40910

INTERSTATE TRANSIT, INC., a Corporation Organized and Existing under the Laws of Ohio, Complainant,

versus

DICK LINDSEY, County Court Clerk of Davidson County, Tennessee, Defendant

BILL OF COMPLAINT

To the Honorable R. B. C. Howell, Chancellor, holding Part I of the Chancery Court at Nashville, Tennessee:

Complainant would respectfully show to the Court:

I

That it is a corporation, organized and existing under the laws of the State of Ohio, with its home or principal [fol. 4] place of business located in the City of Cincinnati, Ohio. Among other things, its charter authorizes the operation for hire of busses; the transportation of passengers interstate, and to otherwise carry on and operate motor busses as a common carrier for hire as an interstate business.

A copy of said charter is herewith exhibited, marked Exhibit No. 1, and made a part of this bill, but same need not be copied. The original will be filed on or before the hearing.

Complainant is now, and has for some time, engaged in the business of transporting passengers for hire between the States. It now operates, in addition to other lines, an interstate bus line between Cincinnati, Ohio and Atlanta, Ga. In operating its busses on said route, it traverses the highways of Ohio, Kentucky, Tennessee and Georgia.

II

That the defendant Dick Lindsey is the regularly constituted, elected and acting County Court Clerk of Davidson County, Tennessee. He is now acting in such capacity, and has so acted for several years prior to the filing of this bill.

[fol. 5]

III

Complainant, in pursuance of and under its charter powers, and in the exercise of rights guaranteed under the constitution of the United States, established a route between Cincinnati, Ohio, and Atlanta, Ga., through Nashville, Tennessee, over the highways traversing the States of Ohio, Kentucky, Tennessee and Georgia, and is now transporting passengers for hire by motor bus between these points. Said highways traversed over said route in Tennessee and other states are constructed jointly by the Federal government and the several states through which said route passes.

Complainant is engaged exclusively in the transportation of passengers interstate and not intra-state. No passenger is received in Tennessee for transportation by complainant in Tennessee, but all passengers transported by complainant are discharged in a state other than the state in which such passengers embark. The route traversed by complainant in the operation of its line is interstate, and it carries passengers exclusively interstate.

IV

Complainant has expended thousands of dollars in the purchase of equipment with which to operate said interstate route and is now using such equipment therein. Large [fol. 6] numbers of persons have been employed, and are now engaged in the furtherance of such interstate business.

V

Chapter 89 of the Public Acts of Tennessee for the year 1927 (Revenue Bill), provides as follows:

Section 4 (page 284 published volume) provides

"That each vocation, occupation, and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as herein-

after fixed, which privilege tax shall be paid to the County Court Clerk as provided by the law for the collection of such revenue."

At pages 290 and 291, published volume, of said Act, it is provided as follows:

"Automobile Busses, Including Busses Operating Into and/or Through Other Counties

(State and Privilege Tax Only)

For each automobile bus operating and carrying passengers on regular or fixed routes from one point in this State, to another point in this State, for which charge is made, in such county, in and from which it operates, there [fol. 7] shall be paid to the County Court Clerk, in such County in, and from which it operates, or claims as its situs, the tax hereafter fixed, and said tax so paid shall be in lieu of all county and municipal privilege taxes for such operation therein. The levy of any such privilege tax by any County or Municipality on such busses is hereby prohibited.

The privilege tax hereby levied on such busses is as follows:

Each bus carrying 18 passengers and less than 30 passengers, per annum $500.00.

Provided, that the privilege tax accruing under this heading shall go to and belong exclusively to the General Fund of the State.

Provided, further, that where any automobile busses operate over one half of their mileage or more over a county maintained road, that one-half of the above tax shall be retained by the county for county road purposes.

Automobile Busses Operating Exclusively in One County

Each person, firm or corporation operating an automo- [fol. 8] bile bus and carrying passengers from one point in one county to another point in the same county on regular or fixed routes, shall pay the county court clerk in such county the following privilege tax:

Each bus carrying 20 passengers and less than 30 passengers, per annum $500.00.

Provided that this tax shall be in lieu of all county and municipal tax, except where said automobile busses operate on county highways, maintained by the county over a majority of the mileage, one half of said tax shall be retained by the county for road purposes.

Provided, further, that this section shall not apply to persons, firms, or corporations who operate a car of not more than 5 passenger seating capacity on a route outside a city or town not exceeding five miles, nor persons, firms or corporations making not over two round trips per day, with a car of not over 5 seating capacity.

Provided, further, that the state privilege tax accruing under this heading shall go and belong exclusively to the General fund.

[fol. 9] Automobile busses operating upon the highways of this State and running into other states, not liable under the foregoing provisions.

State Privilege Tax Only

Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

Each bus carrying over 20 passengers and less than 30 passengers, per annum $500.00.

Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State.

VI

Complainant, on the — day of March, 1929, and less than 30 days prior to the filing of this bill, applied to the defendant County Court Clerk of Davidson County, Tennessee, for the issuance of license tags to attach to its busses to be used [fol. 10] in its interstate business in Tennessee.

However, defendant refused and declined to issue to complainant license tags for its busses unless it had paid a privilege tax assessed against each bus used in Tennessee by complainant, and further threatened to arrest the

operators of its busses used in Tennessee unless and until such tax was paid.

Defendant further threatened to attach such busses used in Tennessee unless such a tax was paid.

VII

Complainant avers that it is not liable for a privilege tax on its busses used in its interstate business in Tennessee, and that no such tax is levied on complainant under the terms of said Chapter 89, Acts of 1927 (Revenue Bill, pages 290-291 printed volume), and that if such a tax is levied on complainant by such act, same is null and void, being in contravention of the commerce clause of the Federal Constitution, being Article I, Section 8, Clause 3 thereof.

However, complainant was offered the alternative of paying a privilege tax on eight busses it proposed to use in its business in Tennessee, amounting to Four Thousand ($4,000.00) Dollars per annum, or $1,000 per quarter, plus [fol. 11] a clerk's fee of $1.50 per bus, or refrain from carrying on its lawful business until such time as its liability for such a tax could be determined by the courts of Tennessee, or to operate in Tennessee without license tags and subject its properties to attachment by the County Court Clerk and its operators to frequent arrests and interference by state officers.

Complainant had already purchased its busses for its operations in Tennessee and had contracted with certain persons to carry on said business, and to await a judicial determination of its liability for said privilege tax would have required its equipment and its employes to remain idle, which would have resulted in serious and permanent loss to your complainant.

Complainant, by reason of the matters and things hereinbefore averred, paid a privilege tax on eight 29-passenger Mack busses, for one-quarter of a year, in the sum of $126.50 each, amounting to One Thousand and Twelve ($1,012) Dollars. Said privilege taxes were paid under protest, by reason of the aforesaid coercion and duress on the part of the defendant. This suit is instituted to recover such sum.

[fol. 12] VIII

Under said Revenue Bill for the year 1927 there are three classes of bus operations that are made privileged

occupations, and complainant does not come within the provisions of the Act.

Class No. 1 (page 290, top of page, published volume) includes each bus operating and carrying passengers on regular or fixed routes from one point in this state to another point in this state. The taxes accruing under this class go into the general funds of the State, unless more than one-half of the regular or fixed route of such bus is over a county maintained road, in which event, one-half of such tax is retained by the county maintaining such road.

Complainant operates between the States and is not within the provisions of Class No. 1.

Class No. 2 (page 290, bottom of page, published volume) includes each bus operating and carrying passengers on regular or fixed routes from one point in one county to another point in the same county. The taxes accruing under this class go into the general funds of the State unless more than one-half of its route traverses a county maintained [fol. 13] highway, in which event one-half of the tax shall be retained by the county for road purposes.

Complainant operates between the States and is not within the provisions of class No. 2.

Said revenue bill provides as follows (at page 291 published volume):

"Automobile busses operating upon the highways of this state and running into other states, not liable under the foregoing provisions."

This paragraph in the revenue bill immediately follows Classes Nos. 1 and 2 referred to above.

Class No. 3 is a State privilege tax only. All taxes accruing under this group go and belong exclusively to the general funds of the State.

Said Class No. 3 includes only bus operations upon the highways of this State for a distance of more than ten miles per trip, and that are not included in Classes Nos. 1 and 2.

This class (No. 3) includes only such bus lines as travers highways interstate, but are engaged in intrastate business. To illustrate:

(a) Busses operating from points in Arkansas to Memphis, Tennessee, where such route traverses more than ten

[fol. 14] miles of highway in Tennessee, and passengers are received in Tennessee for another point in Tennessee along its route, are liable under this class.

(b) Busses operating from points in Mississippi to points in Tennessee, where such route traverses more than ten miles of highway in Tennessee, and passengers are received in Tennessee for another point in Tennessee along its route, are liable under this class.

Complainant, in the operation of its busses, travers highways interstate, and is engaged exclusively in the transportation of passengers interstate, and such operations are not within the contemplation of the provisions of the Revenue Bill referred to in Class No. 3.

And if complainant's operations are within the provisions of the Act referred to as Class No. 3, then said Act as applied to complainant is unconstitutional and void, contravening the commerce clause of the Federal Constitution.

Said Tax is a revenue measure, and the proceeds therefrom go and belong exclusively to the general funds of the state. Such a tax on complainant's operations is an unreasonable burden on interstate commerce and therefore void. [fol. 15] The proceeds of such privilege taxes are not used in the construction and maintenance of highways, but go into the general funds of the State.

IX

Complainant avers that statutes levying taxes upon business will not be extended by implication beyond the clear import of the language used, nor will their operation be enlarged so as to embrace matters not specifically pointed out, although standing upon a close analogy. All questions of doubt arising upon the construction of the statute will be resolved against the government, and in favor of the citizen, because burdens are not to be imposed beyond what the statute expressly imports.

The tax in question is found in a revenue statute and such are construed against the government and in favor of the taxpayer. The intention will not be extended by implication, but must be clearly expressed.

X

Complainant has paid for and obtained license tags which are attached to its busses operating in Tennessee.

[fol. 16] The funds derived from the payment for such tags are used directly for the construction and maintenance of Tennessee highways. In addition to this, complainant pays a state tax of five (5) cents per gallon for gasoline purchased in Tennessee, which five (5) cents tax per gallon on gasoline is used exclusively for highway construction and maintenance in Tennessee.

Said privilege tax of $500.00 per annum per bus on busses carrying over 20 passengers and less than 30 passengers, in addition to hundreds of dollars paid annually for the gasoline tax and a license tax of about $75.00 per year per bus, is grossly excessive and exorbitant, and if applicable to complainant, is an unreasonable burden on interstate commerce.

IX

The interstate transportation of passengers for hire by motor propelled vehicles over the highways of the United States is "Commerce between the states," and is protected by the commerce clause of the Federal constitution.

[fol. 17] Federal aid in the construction of highways in the several states makes clear the purpose of Congress that state highways shall be open to interstate commerce. Any tax placed on such business by the state, as compensation for the privilege of carrying on such business, is an unreasonable burden on such commerce, and in conflict with Article I, Section 8, Clause 3, of the Constitution of the United States of America.

XII

Complainant paid, as aforesaid, to the defendant less than thirty (30) days ago, as privilege taxes on eight 29-passenger Mack busses, for one quarter of a year, the sum of One Hundred and Twenty-Five ($125.00) Dollars, plus clerk's fee of $1.50 per bus, aggregating a total of One Thousand and Twelve ($1,012.00) Dollars to recover which sum this suit is instituted.

The original receipts of the defendant County Court Clerk showing dates of payment and amounts paid, are here shown to the court, marked Exhibits Nos. 2 and 3 to this bill and made a part hereof.

[fol. 18]

XIII

Complainant is not "doing business" in Tennessee but is engaged exclusively in the transportation of persons for hire, by motor vehicle, from points in one state to points in another state, over Federal aid highways.

Complainant has the right to carry on such business under the Federal Constitution, it being a field reserved by the commerce clause for Federal regulation.

XIV

Premises considered, complainant prays:

1. That subpoena to answer issue and be served upon the defendant, requiring him to answer the bill, but the answer under oath is waived.

2. That the court decree that complainant is not liable for a privilege tax on each of its busses operating interstate in Tennessee under Chapter 89 of the Public Acts of 1927.

3. That complainant have and recover of the defendant the Sum of One Thousand Twelve ($1,012.00) Dollars and the costs of this cause.

4. That complainant have such further and other relief as it may be entitled to.

Lackey & Loser, H. Lynne Barber, Solicitors for Complainant.

[fol. 19] *Duly sworn to by J. Carlton Loser. Jurat omitted in printing.*

[fol. 20] IN CHANCERY COURT OF DAVIDSON COUNTY

[Title omitted]

ANSWER—Filed July 15, 1929

Now comes the defendant, Dick Lindsey, County Court Clerk of Davidson County, Tennessee, and answering so

much of the bill filed against him herein as he is advised is necessary for him to answer, answering says:

1. This defendant is without knowledge of the facts contained in the first paragraph of the complainant's bill and for the want of such knowledge neither admits nor denies the allegations in said paragraph and calls for strict proof.

[fol. 21] 2. The second paragraph of complainant's bill is admitted.

3. Referring to the third paragraph of the complainant's bill the defendant denies that the complainant is engaged wholly in interstate business, but on the contrary the defendant is advised and represents that the complainant is engaged in both inter and intrastate business. The defendant denies all other allegations in the third paragraph of said bill not herein expressly admitted or denied.

4. Referring to paragraph four of the bill this defendant is without knowledge of the equipment and cost of the same employed by the complainant in the conduct of its business in and through the State of Tennessee.

5. Referring to paragraph five of the bill this defendant presumes that the complainant has correctly copied into the said paragraph the provisions of Chapter 89 of the Public Acts of Tennessee for the year 1927, relative to the privilege tax on automobile busses, but reserves the right to point out any inaccuracies.

6. Referring to paragraph six of the bill this defendant denies that he refused and declined to issue to complainant license tags for its busses "unless it had paid a privilege tax assessed against each bus used in Tennessee by complainant and further threatened to arrest the operators of [fol. 22] its busses used in Tennessee unless and until such tax was paid."

Further answering said paragraph the defendant denies that a threat to attach such busses used in Tennessee, unless such tax was paid was made by him. He denies that he declined to issue to the complainant the license tags in question unless the complainant paid the privilege tax involved. The defendant was always ready and willing to issue the license tages to the complainant upon the payment of the prescribed fees therefor without any condition

whatsoever with reference to the payment of the privilege tax.

7. Referring to paragraph seven of the bill the defendant making answer thereto denies that the complainant is not liable for a privilege tax as claimed in said paragraph, but on the contrary the defendant avers that the complainant is liable for the privilege tax mentioned under the terms and provisions of Chapter 89 of the Public Acts of 1927; that said Act levies a privilege tax against the business of complainant and that such levy is in all things valid and in no way impinges on any Article of the Constitution of the United States.

[fol. 23] Further answering paragraph seven of the bill the defendant denies that the complainant paid the privilege tax in question under protest in any legal sense. It is admitted however that the complainant did pay the privilege tax mentioned but did so voluntarily and without any coercion or duress on the part of this defendant. And the defendant denies that the complainant is entitled to recover said payment so voluntarily paid by the complainant.

8. Referring to paragraph eight of the bill this defendant denies each and every allegation in said paragraph to the effect that the complainant's operations do not fall within the revenue bill mentioned for the year 1927, which alleges that the complainant is not liable for the privilege tax involved in this cause—on the contrary the defendant alleges that the operations of the complainant, in and through Tennessee, bring it under the revenue act in question and that the complainant is liable for the privilege tax provided in said Act against busses operating for hire along and over the roads and highways of the State. It is denied that said privilege tax constitutes an unreasonable burden on interstate commerce or any burden at all—it is denied that said Revenue Act, or that part of it levying a privilege [fol. 24] tax against the complainant, is unconstitutional and void as violating the commerce clause of the federal constitution or any other reason. It is denied that the complainant is engaged solely in interstate commerce as alleged but on the contrary it is engaged in both inter and intrastate commerce and in its business it operates very heavy busses on the highways of the State to the inconvenience of the traveling public and to the great wear and

detriment of the State's highways, and that the tax levied and collected is but a fair and reasonable contribution to the State for the use of its highways.

9. Referring to paragraphs nine and ten of said bill the defendant denies each and every allegation of fact contained in said paragraphs and expressly denies that the tax paid is excessive and exhorbitant, and for that reason is an unreasonable burden on interstate commerce.

10. Referring to paragraphs eleven, twelve and thirteen of the bill the defendant denies each and every allegation in said several paragraphs in so far as said allegations involve the tender of an issue of fact. It is expressly denied that the complainant is engaged solely in interstate com-
[fol. 25] merce in the sense claimed—it is expressly denied that the tax levied and complained of in this case violates the interstate commerce clause of the United States or that said tax is in any wise a burden on interstate commerce. On the contrary, this defendant is informed, believes and charges that the State in the exercise of its police power has a right to regulate and control commerce on its streets and to levy and collect a contribution, even in the form of a privilege tax from those occupying the highways for commercial purposes for the use of said highway s. It is expressly denied that the complainant is not doing business in Tennessee but on the contrary it is shown that the complainant is doing business in Tennessee in the sense of the law.

For further answer to the bill the defendant expressly denies that the complainant paid the privilege tax in question under protest in the sense of the law but on the contrary it is shown that the complainant made such payment voluntarily and without any coercion or compulsion of any kind or character from this defendant—in short this defendant states that the payment in question was made by the complainant voluntarily and the defendant denies each and every allegation in the bill to the effect that said payment was made by the complainant under duress or compulsion by anything done or said by this defendant.
[fol. 26] For further answer to the bill as a whole this defendant denies each and every allegation contained in the bill not herein admitted or denied.

Now, having fully answered, this defendant prays to be hence dismissed with cost.

R. E. Maiden, Solicitor General for Tennessee. W. H. Eagle, Assistant Attorney General.

[fol. 27] IN CHANCERY COURT OF DAVIDSON COUNTY

INTERSTATE TRANSIT, INC., Complainant,

versus

DICK LINDSEY, Defendant

STIPULATION OF FACTS—Filed February 25, 1930

In this cause it is agreed between the parties as is evidenced by the signatures of counsel, to the following facts:

1. That complainant, Interstate Transit, Inc., is a corporation, organized and existing under the laws of the State of Ohio, and that its charter of incorporation authorizes it to engage in the interstate transportation of persons for hire, by motor bus.

2. That complainant paid to the County Court Clerk, Dick Lindsey, defendant herein, the sum of One Thousand [fol. 28] and Twelve ($1,012.00) Dollars, as a privilege tax on eight Mack 29-Passenger busses, used by complainant in the interstate transportation of passengers for hire in Tennessee. Said payment was for the one-quarter of a year's privilege tax, and includes a clerk's fee of $1.50 per bus. Said tax was paid by complainant involuntarily, under protest and by reason of the duress employed by the defendant.

3. That the tax sought to be recovered in this cause was levied by defendant under Chapter 89, Acts 1927 (Revenue Bill), pages 290 and 291 of published acts. That at the time the tax in question was paid involuntarily, the complainant was engaged exclusively in the interstate transportation of passengers for hire by motor bus in Tennessee, unless the facts and evidence herein constitute a doing of business in Tennessee, and had compiled with all the police regulations of the State, including the payment of

license fees for tax and the tax of five (5) cents per gallon on gasoline.

5. That the said tax was levied under the Revenue Bill for the year 1927, and that said funds go and belong exclusively to the general funds of the State; and that no portion of said tax is used directly in the construction or main-[fol. 29] tenance of highways, nor does any part of said tax go to or is used by any agency or board in Tennessee charged with the duty of regulating or supervising bus operations, either intra- or interstate.

6. That the complainant operates its busses interstate over a route or highway constructed jointly by the Federal Government and the State of Tennessee, and maintained by the State of Tennessee, the line being between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, and Nashville, Tennessee.

We further agree that these stipulations may be filed and read as evidence in this cause. This the 2nd day of January, 1930.

Interstate Transit, Incorporated, Complainant, by J. Carlton Loser, Solicitor. Lackey & Loser. Dick Lindsey, Defendant, by R. E. Maiden, Solicitor.

[fol. 30] IN CHANCERY COURT OF DAVIDSON COUNTY

INTERSTATE TRANSIT, INC., Complainant,

vs.

DICK LINDSEY, Defendant

DECREE—February 28, 1930

This cause came on to be heard this 27th day of February 1930, before the Honorable R. B. C. Howell, Chancellor, upon the original bill, answer thereto, stipulation as to evidence, and upon argument of counsel, from a consideration of all of which the Court is pleased to find as follows:

1. The complainant objected to the introduction of the evidence set out in paragraphs 8 to 12 inclusive and para-

graph 15 of the stipulations, because said evidence is incompetent, irrelevant and immaterial on the following grounds:

[fol. 31] (a) The transactions sought to be proved by said evidence occured in October and November, 1929, while the tax sought to be recovered is for three months periods ending in June and July 1929, and therefore does not reflect on the issues of fact involved.

(b) The statements and acts, referred to in said paragraphs were contrary to specific instructions as to the alleged agents of complainant and were beyond the actual authority of said agents, as well as beyond the apparent scope of the authority of said agents, and therefore not competent evidence against complainant.

The Court was pleased to overrule said objection to said evidence, to which action of the court the complainant excepted.

2. That the evidence contained in paragraphs 8 to 12 inclusive, and paragraph 15 of the stipulations, seeking to show that complainant was engaged in the intrastate transportation of passengers for hire in Tennessee, by reason of the character of witnesses, the manner in which it was obtained and the reason therefor, is not convincing nor is it [fol. 32] sufficient to overthrow the positive evidence of the officers of complainant to the effect that it was engaged solely in interstate commerce.

3. That the complainant, Interstate Transit, Inc. is engaged solely in the interstate transportation of passengers for hire in Tennessee, and is not "doing business" therein so as to make it liable for the tax.

4. That the witness Barber as set out in paragraphs 14 and 17 of the stipulation, is in charge of complainant's interstate operations in Tennessee and has instructed all ticket agents in Tennessee not to sell tickets for intra-state carriage, as well as directing bus operators not to carry passengers intra-state, and the isolated violations of instructions, if true, would not be binding on complainant unless ratified by it, or there was collusion on the part of proper officers with such ticket agents, so as to invoke the penalty, which is not shown in this cause.

5. That the complainant have and recover of the defendant, Dick Lindsey, County Court Clerk, the sum of One Thousand and Twelve ($1012.00) Dollars, as prayed in the bill, said sum having been paid as a privilege tax on eight 29-passenger busses for one quarter of a year, involuntarily and under duress, together with the costs hereof, for which execution may issue.

[fol. 33] To said action of the court, the defendant Dick Lindsey, County Court Clerk, excepted and prayed an appeal to the next term of the Supreme Court sitting at Nashville.

Said defendant in the collection of said tax, was acting for the State, and he is relieved of making bond for his said appeal.

The Clerk and Master is hereby directed to transcribe the evidence in this cause together with the pleadings and records herein, and forward same to the Clerk of the Supreme Court with the exception of Exhibits Nos. 1 and 2 to the stipulation, which shall be sent up in their original form.

O. K. Lackey & Loser, Solicitors for Complainant. R. E. Maiden, Solicitor for Defendant.

[fol. 34] IN THE SUPREME COURT OF TENNESSEE, AT NASHVILLE, TENNESSEE

INTERSTATE TRANSIT, INCORPORATED, Appellee,

vs.

DICK LINDSEY, County Court Clerk, Appellant

Davidson County Equity

STATEMENT OF CASE AND ASSIGNMENTS OF ERROR

May it please the Court:

I

Statement of Case

The case involves the right of the appellee, complainant below, a foreign incorporated bus operator over the high-

ways of Tennessee, to recover certain privileges taxes paid under protest to appellant Clerk, defendant below. The case rests on the assumption that:

(a) The operation of complainant over the highways [fol. 35] of Tennessee do not fall within the provisions of Chapter 89 of the Public Acts of 1927 (Revenue Bill); and (b) that it is engaged exclusively in interstate commerce, and by reason of this fact is exempt from such taxation.

Pleadings and Proceedings

1. The Bill.—It is alleged that complainant is a corporation organized and existing under the laws of the State of Ohio with its home or principal place of business at Cincinnati; that it is engaged in the business of operating motor buses transporting passengers for hire between the states; that it operates a fleet of buses between Cincinnati, Ohio and Atlanta, Georgia, via Louisville, Kentucky, Nashville and Chattanooga, Tennessee; that the highways over which it operates these buses were constructed jointly by the federal government and the several states through which said route passes; that it is engaged exclusively in the transportation of passengers interstate and not intrastate; and that no passengers are received in Tennessee for transportation to any point in Tennessee, but all passengers are discharged in a state other than the state in which such passenger embark; that it has large investments in equipment and many persons in its employ; that defendant is the Clerk of the County Court of Davidson County, Tennessee, and charged with the duty of collecting privilege taxes; that said officer, on the assumption that complainant's operations fell under Chapter 89 Public Acts [fol. 36] of 1927 (Revenue Bill), compelled it under duress to pay the tax in question, which was done under protest; that Chapter 89, Public Acts of 1927 (Revenue Bill) has no application to complainant's operations in Tennessee, and that finally complainant is engaged exclusively in interstate commerce and not liable for the tax, even though the provisions of the Revenue Act apply to its operations.

The bill embraces a prayer for appropriate relief. (Tr., P. 1 et seq.).

2. The Answer.—The answer admits the payment of the tax; asserts complainant's liability therefor under the provisions of Chapter 89 of the Public Acts of 1927 (Revenue Bill); alleges that complainant is engaged in both interstate and intrastate business and is, therefore, liable for the exaction; and finally that the complainant is liable for said exaction, even though engaged exclusively in interstate commerce (Tr., p. 25 et seq.).

3. Stipulations.—The case was heard before the Chancellor on stipulations. These stipulations establish the existence of certain facts and in addition that certain witnesses would give certain testimony with respect to the question of whether or not complainant was doing an intrastate business (Tr., p. 27 et seq.).

[fol. 37] 4. Decree.—At the hearing the Chancellor sustained the bill and granted the relief therein prayed. The defendant Clerk excepted to the action of the Court and prayed and perfected an appeal to this Court (Tr., pp. 42, 43, 44).

II

Assignments of Error

First

The Chancellor erred in sustaining the bill and decreeing in favor of complainant and against the defendant Clerk for $1012.00 and the costs of the cause (Tr. p. 44).

Second

The Chancellor erred in holding and decreeing that the complainant was not engaged in intrastate commerce, and in holding and decreeing that it was engaged exclusively in interstate commerce, and that being so engaged was therefore not subject to the tax (Tr. p. 43); because the great weight of evidence and the only evidence upon the subject shows that the complainant was engaged in intrastate commerce. The evidence upon this point is referred to and relied upon in a discussion of the facts hereinafter.

Third

The Chancellor erred in holding and decreeing that the complainant was engaged wholly in interstate transporta-

[fol. 38] tion of passengers for hire in Tennessee and was not doing business in Tennessee in such manner as to make it liable for the privilege tax in question (Tr. p. 43); for the reason that a bus operator engaged exclusively in interstate operations may be taxed in an amount commensurate with the use of the highway is subjected to by the operation. The facts and the law with reference to this subject will be cited hereinafter.

Fourth

The Chancellor erred in decreeing that the evidence contained in paragraphs eight to twelve inclusive and paragraph fifteen of the stipulations was insufficient to establish the fact of the complainant doing an intrastate business and did not overcome the testimony of the officers of the complainant tending to show that it was engaged wholly in interstate commerce (Tr. p. 43); because the stipulation and the proof in support thereof shows the complainant was engaged in intrastate operation and is conclusive upon that point. Therefore, the Chancellor was in error in holding otherwise.

Fifth

The Chancellor erred in refusing to hold and decree that the complainant was liable for said privilege tax, even [fol. 39] though engaged exclusively in the operation of interstate buses; because such tax can be lawfully levied and collected from a bus operator using the highways of the State in interstate operations, as such operator's fair and reasonable contribution to the cost of constructing and maintaining the highways of the State; and it makes no difference that the tax is not levied and collected for the use of the highways of the State; and it makes no difference that the tax is not levied and collected for the use of the highway fund itself, so long as the State out of other funds looks after the proper and necessary maintenance and upkeep of the highways over which the operator carries on his operation as is done by the State in this case.

Sixth

The Chancellor erred in failing and refusing to deny the relief sought, or any relief, and in not dismissing the bill

and taxing it with the costs of the case, (Tr. p. 42); because of the facts and reasons hereinafter set out in the brief.

[fol. 40] IN SUPREME COURT OF TENNESSEE

INTERSTATE TRANSIT, INC.

v.

DICK LINDSEY, County Court Clerk

Davidson Equity

OPINION

This appeal calls for a construction in application of Section 4, Chap. 89 of the Revenue Act of 1927. The bill was filed to recover privilege taxes paid to the defendant Clerk under protest by an Ohio corporation operating passenger motor busses, known as Colonial Stages, between Cincinnati, Ohio, through Kentucky and Tennessee, via Louisville, Nashville and Chattanooga, to Atlanta, Georgia. The paragraph of the Section under which collection was made is headed "Classification No. 3" and is as follows:

"Automobile Busses Operating Upon the Highways of This State and Running Into Other States, not Liable under the Foregoing Provisions

(State Privilege Tax Only)

"Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

[fol. 41] "Each bus carrying 5 passengers or less, per annum $50.00
"Each bus carrying over 5 passengers and not more than 10 passengers, per annum 100.00
"Each bus carrying over 10 passengers and less than 15 passengers, per annum 200.00

"Each bus carrying 15 passengers and less than 20 passengers, per annum..... 350.00
"Each bus carrying over 20 passengers and less than 30 passengers, per annum..... 500.00
"Each bus carrying over 30 passengers, per annum. 750.00

"Provided that this tax shall be in lieu of all county and municipal taxes; Provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State."

The corporation says that it transports interstate only, that therefore the Act does not, fairly construed, embrace it, and that if construed to embrace it the tax laid would be in contravention of the Commerce Clause of the Federal Constitution (Art. 1, Sec. 8, Clause 3).

The State insists, (1) that the corporation transports both intrastate and interstate, and therefore comes within the terms of the Act, and (2) that even though its business is interstate only, the Act applies and the Federal Constitution does not prohibit its application.

The Chancellor found on the record made that the corporation was doing interstate transportation only, and that the State is precluded by the Commerce Clause of the Federal Constitution from collection of the tax. While the proof shows some disposition on the part of employees of [fol. 42] the corporation to wink at and make easy an evasion of the interstate policy of the Corporation, through the use of tickets calling for destinations immediately over the State lines, we think the record as a whole sustains the finding of the Chancellor that the rules and regulations of, and the instructions issued by the Corporation, together with the form and recitals of its tickets, make out a case of interstate business only.

Conceding that the transportation is interstate, is this Corporation so operating over the highways of the State liable for this tax? A common carrier transporting by bus passengers both interstate and intrastate was held liable for a tax of like nature in Gatlin v. Harrison, 155 Tenn., 560. This Court followed the opinion of the U. S. Supreme Court in Clark v. Poor, et al. since reported in 274 U. S. 557, 71 L. Ed. 1200, in which case the transportation was interstate only. The later case of Sprout v. South Bend,

277 U. S. 170, 72 L. Ed. 837 was in accord. Counsel for the Corporation frankly admit that these, and other cases, clearly recognize that a fee may be lawfully exacted by the State from one doing an interstate transportation business only, but says (1) that the Revenue Act of 1927 does not by its terms apply to one transporting passengers interstate only, and (2) that an essential distinction exists between a license fee going into a special highway fund, and a privilege tax going into the general funds of the State. [fol. 43] Counsel quote from Sprout v. South Bend, supra, as follows:

"It is true that a State may impose even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways." Citing, Hendrick v. Maryland, 235 U. S., 610, 622, 59 L. Ed. 385, and Inter-State Busses Corp. v. Blodgett, 276 U. S. 245, 72 L. Ed. 551.

We think this section of our Revenue Act embraces in its terms busses transporting interstate. The caption of the pertinent paragraph reads, "busses * * * running into other states," and in its body it levies the tax on "each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip," and not liable under preceding paragraphs. A purpose is indicated by the ten mile restriction to avoid burdening interstate transportation unreasonably, relieving from this tax in cases of incidental and inconsequential crossing of, or entry over, the state lines in the course of through travel.

We come then to this single issue: Is the power of the State to impose "a reasonable charge" upon busses making use of its highways for interstate transportation limited to a regulation or license fee under the police power, as insisted, and confined to legislation which appropriates the fund exclusively and specifically to highway purposes, either of regulation or maintenance. This insistence seems to be met by Mr. Justice Brandeis in Clark v. Poor, supra, who, after referring to the contention [fol. 44] therein made that "all of the tax is not used for maintenance and repair of the highways," said:

"This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs."

The Commerce Clause does not restrict the power of the State to tax unless (1) the tax is discriminatory, or (2) it is unreasonably burdensome on interstate commerce. Here we have no discrimination. A like tax is levied by the different paragraphs of the pertinent section of the Act on all bus operators using the roads of the State, (1) from point to point within the State, (2) from point to point within a County, and (3) from a point within to a point without the State,—provided the distance is as much as ten miles.

Nor is this tax apparently unduly burdensome. Not only is the charge approximately the same on all motor vehicles of like passenger carrying capacity, whether traveling wholly within the State or not, but it is fixed according to a "uniform, fair and practicable standard." In Hendrick v. Maryland, supra, it was said:

"In view of the many decisions of this Court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefore. The amount of the charges and the method of collection are primarily for determination by the State itself; and so long as they are reasonable and are fixed according to some uniform, fair and practicable standard, they constitute no burden on interstate commerce." (Citing authorities.)

[fol. 45] And in Clark v. Poor, supra, it was said:

"The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. (Citing authorities.) Users of them although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire who make the highways their place of business may be properly charged an extra tax for such use." (Citing authorities.)

It is to be borne in mind that the privilege of use of highways, built and maintained by the states at enormous expense, is a privilege in a peculiar sense not applicable to the use by railways of their rights of way over roadbeds and rail owned and maintained by the railways, rather than the state. The language above quoted from opinions of the U. S. Supreme Court, one by Mr. Justice Brandeis and the other by Mr. Justice McReynolds, suggests this distinction, and clearly recognizes the right of a state, not only to regulate under its police power all the users of its highways, but the right to charge therefor. It is not the placing of a tax charge upon such carriers interstate, which is prohibited by the Commerce Clause, but the placing of such tax in such a way as to burden and interfere with the free movement of commodities or passengers interstate. A charge is not a burden when its equivalent in goods, service or accommodation is exchanged therefor. The State furnishes expensively constructed and maintained highways for the ac-ommodation of these carriers for hire and for [fol. 46] profit. An interstate passenger bus might as consistently contend against a toll charge over a river bridge, as against a charge for traversing a State owned highway. The record shows that the fare for a single passenger across the state is $3.50, and the tax on a 20 passenger bus is $350.00 per year. Assuming that a bus makes but one trip daily, it traverses more than 200 miles of this highway at a charge of less than $1.00 for each 15 to 20 passengers. The tax thus appears to be entirely reasonable.

Clear as it is, both on principle and authority, that the State may exact a charge for the use of its highways, without reference to whither the user comes, or whence he goes, we are not of opinion that the form or name of the charge is determinative of the right. Nor are we persuaded that the right is defeated by a failure to designate in the Act by restrictive terms the fund into which the proceeds are primarily to go. This is hardly more than a matter of bookkeeping. Once in the general funds of the State, as provided by this Act, it is subject to distribution and allocation in any direction where it may be found to be most needed. If it meets or relieves the State's requirements in one direction, more is left for application in another. It is a contribution to the up-keep of the State's government

as a whole, and a large part of this up-keep cost is the item of highways.

[fol. 47] In 5 R. C. L. p. 797, it is said that, "a state may impose a tax, reasonable in amount and not discriminatory, on automobiles using the highways of the State, though they belong to non-residents and are employed in interstate commerce." Kane v. State, 81 N. J. L. 594, 80 Atl. 453, Ann. Cas. 1912 D. 237, is cited. In that case the court recognizes that the license fee is a tax for revenue purposes and that it affects interstate commerce, but finding the charge reasonable and not discriminatory holds such a charge not obnoxious to the Federal Commerce Clause. Decisions of the U. S. Supreme Court affirming the right of a state to impose charges, although affecting interstate commerce, are referred to, where the state had constructed wharfs for the handling of freight, or locks or booms in navigable streams, on the sound principle that the state "having expended moneys, either itself, or by the agencies created by it, in increasing the facility with which commerce, either interstate or intrastate, may be carried on, is entitled to charge a fair remuneration for the outlay made by it, and for the maintenance of the public work which it has constructed." And so applicable to the case before us is the further language of the opinion of the learned Chief Justice in that case that we quote at length:

"A very ordinary example of the exercise of this power is the construction of public roads known as 'turnpikes' by agencies created by the state, for the use of which tolls are permitted to be charged to persons using the same. Such [fol. 48] public roads are open to the use of every person desiring to travel upon them upon payment of the tolls authorized to be charged, but it has never been suggested, so far as we are aware (and certainly any such suggestion would be without merit), that a team and wagon bringing merchandise from another state is entitled to the use of these improved highways without the payment of the required toll because engaged in interstate commerce.

"Although, ordinarily, turnpikes are built and owned by corporations created by the state for the purpose of constructing and maintaining them, what the state may do indirectly through such agencies it may do directly—that

is, it may itself lay out and construct such improved public roads, and charge reasonable tolls to all persons using the same, without regard to the character of the business for which they are being used. And this is practically what New Jersey is now doing. It has spent millions of dollars in improving the roads of the state, and is yearly expending hundreds of thousands more in their extension and maintenance. It has found that the use of these roads by heavy and swiftly moving automobiles results in their rapid deterioration, and increases largely the annual expense of maintaining them in proper condition. It considers, and rightly, we think, that a use of its roads which is so abnormally destructive should no longer be free, and, by the law of 1908, it imposes upon all of these vehicles which are driven over its roads a charge for such user for the [fol. 49] purpose of raising revenue to be applied to their upkeep. Instead of charging a mileage fee, or toll, to be regulated by the distance traveled, it has seen fit to require the payment of a lump sum by the owners of such machines, for the privilege of using its roads, the charge being regulated by the horse power shown. * * * The charging of an annual sum for the use of its highways by automobiles, instead of a mileage fee, is clearly a matter within the discretion of the state. No Constitutional objection lies in the way of a legislative body's prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. Home Ins. Co. v. New York, 134 U. S. 594, 10 S. Ct. 593, 33 U. S. (L. ed.) 1025. The only limit upon its power is that the amount charged shall not be unreasonable; and there is no suggestion that such a condition is created by the present law."

This decision was reviewed and affirmed by the U. S. Supreme Court in Kane v. New Jersey, 240 U. S. 160, 61 L. Ed. 222, and cited with approval in Sprout v. South Bend, supra.

We are of opinion that the Revenue Act applies and that the tax is valid. The decree must be reversed and the bill dismissed.

Chambliss, J.

[fol. 50] IN SUPREME COURT OF TENNESSEE

INTERSTATE TRANSIT COMPANY, INC.,

vs.

DICK LINDSEY, County Court Clerk

Davidson Equity

DECREE—June 28, 1930

This cause came on to be heard upon a transcript of the record from the Chancery Court of Davidson County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is error.

It is therefore ordered and decreed by the Court that the decree of the Chancellor be reversed, the original bill be dismissed, and that the Interstate Transit Company, Incorporated, principal and J. Carlton Loser, surety, will pay all of the costs of this cause, for which let fi. fa. issue.

[fol. 51] IN SUPREME COURT OF TENNESSEE

[Title omitted]

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed Aug. 2, 1930

To the Honorable Supreme Court, the Honorable Grafton Green, Chief Justice of the Supreme Court of the State of Tennessee:

Petition of Interstate Transit, Inc., a Corporation organized and Existing under the Laws of the State of Ohio, with Its Principal Office and Place of Business in the City of Cincinnati, Ohio

I

The petitioner shows that heretofore, towit, on June 28, 1930, the Supreme Court of the State of Tennessee, made and entered a final order and judgment herein in favor of

Dick Lindsey, County Court Clerk of Davidson County, Tennessee, a resident of Davidson County, Tennessee, who is hereinafter designated as appellee, and against the above [fol. 52] named petitioner, who is hereinafter designated as appellant or petitioner, in which final order and judgment and proceedings had prior thereunto in this case, certain errors were committed greatly to the prejudice of the petitioner, all of which will more in detail appear from the assignment of errors, which is filed with this petition.

II

The petitioner above named shows that this is a proceeding instituted by bill in the Chancery Court of Davidson County, Tennessee, to recover from the appellee certain privilege taxes paid involuntarily and under protest. The Chancellor in the Trial Court decreed in favor of petitioner and against appellee. On appeal to the Supreme Court of Tennessee said court reversed the Chancellor and dismissed petitioner's bill, decreeing that petitioner was liable for the tax in question, which action on the part of the Supreme Court of Tennessee petitioner respectfully insists is erroneous. This proceeding is instituted so that the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment and decree aforesaid of said Supreme Court of Tennessee be reversd.

The petitioner shows that, heretofore, it filed in Part I of the Chancery Court for Davidson County, Tenneseee, its bill, and in said bill, petitioner averred that it was a corpo- [fol. 53] ration, organized and existing under the laws of the State of Ohio, with its principal office and place of business in the City of Cincinnati, Ohio; that under its Charter of Incorporation it is authorized to operate for hire motor busses for the interstate transportation of passengers; that it operated, in addition to other lines, an interstate bus line between Cincinnati, Ohio and Atlanta, Georgia, via Louisville, Kentucky, Nashville and Chattanooga, Tennessee: and that in operating said line or route it traversed the highways of Ohio, Kentucky, Tennessee and Georgia.

The petitioner averred that Dick Lindsey, appellee, was the regularly elected, constituted and acting County Court Clerk of Davidson County, Tennessee, and that he had so acted for several years prior to filing of the bill in this

cause; that petitioner, under its charter, and in the exercise of rights guaranteed it under the Constitution of the United States, established its route between Cincinnati, Ohio, and Atlanta, Georgia, and operated its busses over said route for the exclusive interstate transportation of passengers for hire over the highways in Tennessee, Ohio, Kentucky and Georgia, said highways being constructed jointly by the Federal Government and the several states; that it was engaged exclusively in the transportation of passengers interstate and not intrastate; that no passenger was or is received in Tennessee for transportation in Tennessee, but all passengers transported were discharged in a state other than the state in which such passengers embarked; that the route traversed by petitioner was and is interstate, and that it carried passengers exclusively interstate.

[fol. 54] The petitioner averred in said bill that Chapter 89 of the Public Acts of Tennessee for the year, 1927, (Revenue Bill) provides as follows:

"Section 4 (page 284 published volume) provides 'That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as hereinafter fixed, which privilege tax shall be paid to the County Court Clerk, as provided by law for the collection of such revenue.'

"At pages 290 and 291, published volume, of said Act, it is provided as follows:

'Automobile Busses, Including Busses Operating Into and/or Through Other Counties

(State Privilege Tax Only)

'For each automobile bus operating and carrying passengers on regular or fixed routes from one point in this State, to another point in this State, for which charge is made, in such county in and from which it operates, there shall be paid to the County Court Clerk, in such County, in and from which it operates, or claims as its situs, the tax hereafter fixed, and said tax so paid shall be in lieu of all county and municipal privilege taxes for such operation therein. The levy of any such privilege tax by any County or Municipality on such busses is hereby prohibited.

'The privilege tax hereby levied on such busses is as follows:

'Each bus carrying 18 passengers and less than 30 passengers, per annum $500.00.

Provided, that the privilege tax accruing under this heading shall go to and belong exclusively to the General [fol. 55] Fund of the State.

'Provided, further, that where any automobile busses operate over one-half of their mileage or more over a county maintained road, that one-half of the above tax shall be retained by the county for county road purposes.

'Automobile Busses Operating Exclusively in One County

'Each person, firm or corporation operating an automobile bus and carrying passengers from one point in one county to another point in the same county on regular or fixed routes, shall pay the county court clerk in such county the following privilege tax:

'Each bus carrying 20 passengers and less than 30 passengers, per annum $500.00.

'Provided, that this tax shall be in lieu of all county and municipal tax, except where said automobile busses operate on county highways, maintained by the county over a majority of the mileage, one-half of said tax shall be retained by the county for road purposes.

'Provided, further, that this section shall not apply to persons, firms or corporations who operate a car of not more than 5 passenger seating capacity on a route outside a city or town not exceeding five miles, nor persons, firms or corporations making not over two round trips per day, with a car of not over 5 seating capacity.

'Provided, further, that the state privilege tax accruing under this heading shall go and belong exclusively to the General fund.

'Automobile busses operating upon the highways of this State and running into other state, not liable under the foregoing provisions.

[fol. 56] State Privilege Tax Only

'Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this state for a distance of more than ten miles per trip, and not

liable for a privilege tax under the foregoing provisions shall pay as follows:

'Each bus carrying over 20 passengers and less than 30 passengers, per annum $500.00.

'Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General funds of the state.' ''

That petitioner applied to the appellee for the issuance of license tags for its busses to be used in Tennessee; that he refused and declined to issue such license plates or tags unless petitioner paid a privilege tax of $500.00 per bus per year, and threatened to arrest petitioner's operators unless and until such privilege tax was paid, as alleged to have been assessed and exacted by said Chapter 89 of the Public Acts for the year, 1927, as set out next hereinabove.

Petitioner further averred that it was not liable for a privilege tax on its busses used exclusively in its interstate business, and that no such tax was levied on it under the terms of said Chapter 89, Public Acts for 1927; that if such a tax was levied by said Act, same was and is null and void, being in contravention of the Commerce Clause of the Federal Constitution, being Article 1, section 8, clause [fol. 57] 3 thereof.

Further, petitioner averred that it was offered the alternative of paying a privilege tax on eight busses, amounting to $4,000.00 per annum, or $1,000.00 per quarter of a year plus a fee of $1.50 per bus, or refrain from carrying on its lawful business in Tennessee until such time as its liability for such a tax could be determined, or to operate in Tennessee without license plates or tags and subject itself to frequent arrests and interferences by such officers.

It was further averred in said bill by petitioner that its equipment for Tennessee operations had been obtained and its employees were ready for activities, and to await a judicial determination of its liability for such privilege tax would have resulted in idleness for its equipment and employees, entailing serious and permanent loss.

It was further averred by petitioner that, under such duress and coercion on the part of appellee, it involuntarily paid a privilege tax on eight 29-passenger busses for one-quarter of a year, in the sum of $126.50 each, amount-

ing to $1,012.00, and that such amount was paid under protest, and that the suit herein referred to was to recover said sum paid under protest and involuntarily.

[fol. 58] Petitioner further averred that under said Revenue Bill for the year, 1927, hereinbefore referred to, there were three classes of bus operations that were made privileged occupations and that appellant or petitioner, did not come within the provisions of said Act.

It was shown in said petition that class No. 1 included each bus operating and carrying passengers from one point in the state to another point in the state; that class No. 2 included each bus operating and carrying passengers from one point in one county to another point in the same county, and that immediately following the two classes referred to in said Revenue Bill, there was a provision as follows:

"Automobile busses operating upon the highways of this state and running into other states not liable under the foregoing provisions."

It was further shown that under class No. 3, said bill levied a privilege tax for state purposes only, and that all taxes accruing under said class go and belong exclusively to the general funds of the state; that said class No. 3 included only bus operations upon the highways of this state for a distance of more than ten miles per trip, and were not included in classes Nos. 1 and 2; that class No. 3 included only such bus lines as traversed highways interstate and were engaged in intrastate business.

[fol. 59] It was further averred in said bill that petitioner, in the operation of its busses, traversed highways interstate, and was engaged exclusively in the transportation of passengers interstate, and that its operations were not within the purview of the provisions of the Revenue Bill referred to as class No. 3.

Petitioner further averred in said bill that if its operations were within the provisions of the Act referred to as class No. 3, that said Act as applied to its interstate operations was unconstitutional and void, contravening the Commerce Clause of the Federal Constitution.

The petitioner further averred in its said bill that said tax was a revenue measure and the proceeds therefrom go into the general funds of the state, and such a tax on its

operations was an unreasonable burden on interstate commerce and therefore void, and that the proceeds of such privilege tax were not used in the construction and maintenance of Tennessee highways.

It was further averred that statutes levying taxes would not be extended by implication nor their operation enlarged so as to embrace matters not specifically pointed out; that questions of doubt arising upon the construction would be resolved against the government and in favor of the citizen, and that the tax in question is found in a revenue measure.

Petitioner further averred that it paid for and obtained license tags for its busses, and that the funds derived [fol. 60] therefrom were used directly for the construction and maintenance of Tennessee highways, and further that it paid a five cent tax per gallon on all gasoline used and purchased in Tennessee, which five cent tax per gallon is also used exclusively for highway construction and maintenance in Tennessee. It was further averred in said bill by petitioner that said tax of $500.00 per bus on its interstate operations in Tennessee was grossly excessive and exorbitant, and is an unreasonable burden on interstate commerce.

It was further averred by petitioner in its said bill that the interstate transportation of passengers for hire by motor propelled vehicles over highways of the United States is "commerce between states", and is protected by the commerce clause of the Federal Constitution.

That Federal aid in highway construction makes clear the purpose of Congress that such highways shall be open to interstate commerce, and that any tax placed on such business by the state as compensation for the privilege of carrying on such business is an unreasonable burden on same and in conflict with the Federal Constitution.

It was further averred by the petitioner that it was not "doing business" in Tennessee, but was engaged exclusively in transporting passengers for hire from points in one state to points in another state, over Federal aid highways, and that such business was lawful under the Federal Constitution, it being a field reserved by the commerce clause for Federal regulations.

[fol. 61] Petitioner prayed for process and other appro-

priate relief, seeking to recover the sum of $1,012.00 paid to appellee, Dick Lindsey, under protest and involuntarily.

III

Appellee answered said bill, denying generally that petitioner was engaged wholly in interstate commerce, but alleged that he was advised that it was engaged in both inter- and intra-state commerce. It was further denied that the tax was paid involuntarily and under duress. Further, that said Act levied a privilege tax on its interstate business and that such tax in no way offended any article of the Constitution of the United States.

IV

Petitioner would further show that no proof was taken in this cause in the Trial Court, but certain facts were admitted, while other alleged facts were submitted to the court as being evidence that would be testified to should the witnesses be called. Said admitted facts show that petitioner paid said tax in the sum of $1,012.00 to the appellee as a privilege tax on its busses involuntarily, under protest and by reason of the duress employed by the appellee.

It was further admitted by appellee that petitioner was engaged exclusively in the interstate transportation of pas- [fol. 62] sengers for hire by motor bus, and that it operates its busses exclusively over Federal aid highways, unless certain facts presented to the court constituted the doing of an intrastate business in Tennessee.

It is further shown by petitioner that the Chancellor decreed that petitioner was engaged exclusively in interstate transportation of passengers for hire in Tennessee, and was therefore not liable for the tax, and decreed in favor of petitioner in the sum of $1,012.00 and against the appellee.

Petitioner shows that the appellee excepted to the action of the Chancellor in so decreeing against him, and prayed an appeal to the Supreme Court of Tennessee, the highest court in said state, and said Supreme Court, at its December term, 1929, towit, on June 28, 1930, reversed the judgment of the Trial Court, namely, Part I of the Chancery

Court at Nashville, Davidson County, Tennessee, and dismissed the said bill of petitioner.

It is further shown by petitioner that the Supreme Court of Tennessee held in its said decree that petitioner was engaged exclusively in interstate transportation of passengers for hire by motor bus, and that it was not doing an intra-state business.

V

Petitioner insisted in the Supreme Court of Tennessee—

[fol. 63] First, that under a proper construction of the Revenue Bill of 1927, it was not within the purview of said Act; and

Second, that if it was within the purview of said Act that same was null and void, being in contravention of the Commerce Clause of the Federal Constitution, same being Article I, Section 8, clause 3 thereof.

Further it was insisted by petitioner in the Trial Court—

First, that said tax of $500.00 per bus, if applicable to it, was and is grossly excessive and exorbitant, and unreasonably burdened interstate commerce; and

Second, that the placing of such a tax on interstate commerce invaded a field reserved by the commerce clause for Federal regulations, and was and is offensive to Article I, section 8, clause 3 of the Federal Constitution.

VI

The petitioner shows that Chapter 89 of the Public Acts of Tennessee for the year, 1927, section 4 thereof, as construed by the Honorable Supreme Court of Tennessee, is in violation of Article I, section 8, clause 3, of the Constitution of the United States, in that it places an unreasonable burden on interstate commerce.

[fol. 64] The Petitioner further shows that the said judgment of the Supreme Court of the State of Tennessee was and is a final judgment in the highest court of the State of Tennessee, in which court a decision in said suit could or can be had.

The petitioner further shows that a Federal question was made in such case, towit, as hereinbefore set out, and that said judgment of the Supreme Court of Tennessee was and is repugnant to and in conflict with the Federal Constitution, and particularly with Article I, Section 8, Clause 3, of the Constitution of the United States as aforesaid, and that the said judgment of said Supreme Court was contrary thereto and the decision of said Federal question was necessary to the judgment rendered.

VII

Wherefore your Petitioner prays:

1. That an appeal to the Supreme Court of the United States may issue in this case from the Supreme Court of the State of Tennessee for the correction of the errors so complained of;

2. That citation be granted and signed;

3. That a transcript of the record, proceedings and papers in this case, duly authenticated by the Clerk of the Supreme Court of the State of Tennessee, may be sent to the Supreme Court of the United States, as provided by law; and

4. That the errors complained of may be reviewed in the Supreme Court of the United States, and the judgment aforesaid of said Supreme Court of Tennessee be reversed.

[fol. 65] Dated this 2nd day of August, 1930.

Interstate Transit, Inc., by J. Carlton Loser, Thos. L. Tallentire, H. Lynne Barber, J. G. Lackey, Attys. for Petitioner and Appellant.

The appeal as prayed for in the foregoing petition is hereby allowed this 2 day of August, A. D. 1930, and a bond therefor is fixed at the sum of $1,000.00.

Dated at Nashville, Tennessee, this 2 day of August, A. D. 1930.

Grafton Green, Chief Justice of the Supreme Court of the State of Tennessee.

[File endorsement omitted.]

[fol. 66] [File endorsement omitted]

IN SUPREME COURT OF TENNESSEE

[Title omitted]

ASSIGNMENT OF ERRORS—Filed Aug. 2, 1930

Now comes the petitioner or appellant in the above entitled cause, and files the following assignment of errors upon which it will rely upon its prosecution of the appeal to the Supreme Court of the United States in the above entitled cause, from the decree made by this Honorable Court on the 28th day of June, 1930:

I

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by section 4 of Chapter 89 of the Acts of Tennessee for the year 1927, is a valid and reasonable tax on interstate commerce.

II

That the Supreme Court of Tennessee erred in decreeing that the privilege tax of Five Hundred ($500.00) Dollars per annum per bus engaged exclusively in interstate commerce, by transporting passengers for hire across the State of Tennessee, as levied by Section 4, Chapter 89, Acts of [fol. 67] Tennessee for 1927, is reasonable, and consonant with the Commerce Clause of the Federal Constitution, being Article I, Section 8, Clause 3 thereof.

III

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied on interstate bus operators, by Section 4, Chapter 89, Acts of Tennessee for 1927, is consonant with the Commerce Clause of the Federal Constitution, although the proceeds from said tax go and belong exclusively to the general funds of the state; is fixed in an arbitrary amount, and is the same for busses doing intra and interstate business.

IV

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is valid and constitutional, although said tax is found in a revenue measure, and no part of the proceeds is used for highway maintenance and construction.

V

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for year 1927, is a regulatory measure, when the proceeds of said tax go into the general funds of the State and is found in the 1927 Revenue Bill of Tennessee.

VI

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for [fol. 68] year 1927, is a reasonable charge on exclusive interstate bus operations as their fair contribution to the cost of constructing and maintaining the public highways, when appellant and all others similarly situated are required, under the laws and statutes of Tennessee, to pay a registration or license fee per vehicle to said state, according to capacity and weight of such vehicle; an excise tax of five (5) cents per gallon on gasoline purchased and used in Tennessee, and an inspection fee of $2.50 per bus seat per annum, the entire proceeds from the three levies being impressed with a trust, being exacted for highway maintenance and construction exclusively, and to cover the cost of inspection of equipment so used. Said three levies are in addition to the tax in question.

Wherefore the appellant prays that said decree be reversed and that said Supreme Court of Tennessee be directed to enter an order reversing its decree and affirming the decision of the trial court in said cause.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri,
H. Lynne Barber, Attys. for Appellant.

[fol. 69] IN SUPREME COURT OF TENNESSEE

[Title omitted]

ORDER ALLOWING APPEAL

Be it Remembered that this case came on to be heard this 2nd day of August, as well as at former days of the term before the Supreme Court of the State of Tennessee, upon petition of appellant, Interstate Transit, Incorporated, for an appeal in the above case to the Supreme Court of the United States, and upon consideration of the premises, the Court is pleased to grant said appeal upon the petitioner, the Interstate Transit, Incorporated, executing bond in the sum of One Thousand Dollars ($1,000.00) conditioned as the law directs.

It is ordered by the Court that the petition for appeal and this decree and such other papers and the record, be certified to the Supreme Court of the United States.

Grafton Green, Chief Justice.

[fols. 70-74] Writ of error omitted in printing.

[fols. 75 & 76] Bond on appeal for $1,000, approved August 2, 1930, omitted in printing.

[fols. 77-81] Citation in usual form, showing service on L. D. Smith et al., omitted in printing.

[fol. 82] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON AND DESIGNATION OF PARTS OF RECORD TO BE PRINTED—Filed Aug. 22, 1930

The appellant hereby presents the following statement of errors upon which the appellant intends to rely in the

above entitled case, and the parts of the record which the appellant thinks necessary for the consideration thereof.

[fol. 83] Statement of Errors Relied Upon by the Appellant

Now comes the Interstate Transit, Inc., a corporation, organized and existing under the laws of the State of Ohio, the petitioner and appellant, and in connection with its petition for Appeal, shows that in the Record, proceedings, decision and final judgment of the Supreme Court of the State of Tennessee, in the above entitled case, manifest error has intervened to the prejudice of the petitioner and appellant in this, towit:

First. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by section 4 of Chapter 89 of the Acts of Tennessee for the year 1927, is a valid and reasonable tax on interstate commerce.

Second. That the Supreme Court of Tennessee erred in decreeing that the privilege tax of Five Hundred ($500.00) Dollars per annum per bus engaged exclusively in interstate commerce, by transporting passengers for hire across the State of Tennessee, as levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is reasonable, and consonant with the Commerce Clause of the Federal Constitution, being Article I, Section 8, Clause 3, thereof.

[fol. 84] Third. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied on interstate bus operators, by Section 4, Chapter 89, Acts of Tennessee for 1927, is consonant with the Commerce Clause of the Federal Constitution, although the proceeds from said tax go and belong exclusively to the general funds of the state; is fixed in an arbitrary amount, and is the same for busses doing intra- and interstate business.

Fourth. That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is valid and constitutional, although said tax is found in a revenue measure, and no part of the proceeds is used for highway maintenance and construction.

Fifth. That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee

for year 1927, is a regulatory measure, when the proceeds of said tax go into the general funds of the State and is found in the 1927 Revenue Bill of Tennessee.

Sixth. That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for year 1927, is a reasonable charge on exclusive interstate bus operations as their fair contribution to the cost of constructing and maintaining the public highways, when [fol. 85] appellant and all others similarly situated are required, under the laws and statutes of Tennessee, to pay a registration or license fee per vehicle to said state, according to capacity and weight of such vehicle; an excise tax of five (5) cents per gallon on gasoline purchased and used in Tennessee, and an inspection fee of $2.50 per bus seat per annum, the entire proceeds from the three levies being impressed with a trust, being exacted for highway maintenance and construction exclusively, and to cover the cost of inspection of equipment so used. Said three levies are in addition to the tax in question.

Designation of Parts of the Record by Appellant

The appellant also states and avers that it considers the following parts of the Record necessary for the consideration of the errors upon which it intends to rely upon hearing of this case, towit:

1. The original bill of the complainant, or appellant, filed in Part I of the Chancery Court at Nashville, Tennessee.

2. The answer of the appellee to said original bill.

3. The caption and paragraphs 1, 2, 3, 5 and 6, and the signatures of counsel representing the parties of the Stipulation filed in the Chancery Court at Nashville on February 25, 1930.

[fol. 86] 4. The final decree or judgment of the Chancellor in said case.

5. The Assignment of Errors of appellee, Dick Lindsey, filed in the Supreme Court of the State of Tennessee, exclusive of the brief on the law in support thereof.

6. The opinion and judgment of the Supreme Court thereof.

7. The petition for appeal to the United States Supreme Court from the Supreme Court of the State of Tennessee in this case.

8. The Assignment of Errors on said appeal.

9. The Order of the Supreme Court of the State of Tennessee, allowing said appeal.

10. The bond executed herein.

11. The Citation issued herein.

12. The appeal issued herein.

This the 19th day of August, 1930.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri, H. Lynne Barber, Counsel for Appellant.

[fol. 87] To L. D. Smith, Attorney-General for the State of Tennessee; Roy E. Beeler and W. H. Eagle, Assistant Attorneys-General for the State of Tennessee, counsel for the appellee in the above-entitled case:

We herewith serve upon the appellee above named, by delivering to you, a copy of the statement of the errors upon which the appellant in the above entitled case intends to rely and of the parts of the record which the appellant thinks necessary for the consideration thereof.

[fol. 88] Dated this the 19th day of August, 1930.

J. Carlton Loser, J. G. Lackey, Thos. L. Tallenteri, H. Lynne Barber, Counsel for the Appellant.

Service of the foregoing notice this the 20 day of August, 1930, is hereby acknowledged, and service of the statement referred to in said notice is also hereby acknowledged.

L. D. Smith. R. H. Beeler, W. H. Eagle, Counsel for the Appellee.

[fol. 89] [File endorsement omitted.]

[fol. 90] In Supreme Court of the United States

Designation by Appellee of Additional Parts of Record to be Printed—Filed Aug. 25, 1930

Now comes Dick Lindsey, appellee in the above styled cause, and avers that in addition to the portions of the

record designated by appellant, he considers the following additional portion of the record necessary for the consideration of the Court in this case, and therefore designates the same to be included in the transcript of the record herein:

I

The entire stipulation of facts, together with the caption and signature of counsel representing the parties. Said stipulation was filed in the Chancery Court of Davidson County and is partly designated by appellant under sub-
[fol. 91] head III of its designation of the portions of the record desired by it.

This 21st day of August, 1930.

L. D. Smith, Roy H. Beeler, W. H. Eagle, Attorneys for Appellee.

[fol. 92] [File endorsement omitted.]

Endorsed on cover: File No. 35,280. Tennessee Supreme Court. Term No. 358. Interstate Transit, Inc., appellant, vs. Dick Lindsey, County Court Clerk. Filed August 18, 1930. File No. 35,280.

FILE COPY

AUG 29 1930

In the

Supreme Court of the United States

at the

October Term, A.D., 1930.

No. 358.

INTERSTATE TRANSIT, INC.,
Appellant,

vs.

DICK LINDSEY,
Appellee.

JURISDICTIONAL STATEMENT OF APPELLANT.

J. CARLTON LOSER,
THOS. L. TALLENTIRE,
Counsel for Appellant.

J. G. LACKEY,
H. LYNNE BARBER,
Of Counsel.

SUBJECT INDEX.

PAGES

APPEAL—
Section 237 (a) Judicial Code (No. 344, U. S. C. Title 28) as amended by Act of Feb. 13, 1925..... 1

STATEMENT OF CASE 2-4
Appellant engaged in Interstate Commerce 2
Federal question raised in pleadings 4
Trial Court held appellant engaged in Interstate Commerce exclusively 4
Supreme Court of Tennessee held appellant engaged exclusively in Interstate Commerce 7
Supreme Court of Tennessee held statute applicable to exclusive interstate operations..... 7-8
Supreme Court of Tennessee held statute valid..... 7

STATUTE OF TENNESSEE ASSAILED 2-3

NATURE OF CASE AND RULINGS 6-10

JURISDICTION OF SUPREME COURT OF UNITED STATES 5-6
Appeal under Sec. 237a Judicial Code, U. S. C. Title 28, Section 344, as amended Act of Feb. 13, 1925, Chap. 229, 43 Stat. 936..... 1, 5
Supreme Court of Tennessee highest court in State.. 5
Constitution of Tennessee 5-6
Judgment, final 6
Cases sustaining jurisdiction 14-15-16

FEDERAL QUESTION SUBSTANTIAL 10-12

JUDGMENT, DATE OF 13

APPEAL PERFECTED—
Final decree of Tennessee Court 13
Petition for, filed 13
Allowed 13
Assignment of errors, filed 13

PAGES

Bond, approved and filed 13

Writ for, issued by U. S. Dist. Court and filed Supreme Court of Tennessee 13-14

Citation, issued and served 14

Record certified as designated 14

TABLE OF CASES.

Adams v. *Russell*, 229 U. S., 363, S. Ct., 846, 57 L. Ed., 1224 15

Blythe v. *Hinckley*, 180 U. S., 333, 21 S. Ct., 390, 45 L. Ed., 557 15

Brown v. *Maryland* (1827), 12 Wheaton, 419 11

Buck v. *Kuykendall*, 267 U. S., 307, 45 S. Ct., 324 15

Geo. W. Bush v. *Maloy*, 267 U. S., 317, 45 S. Ct., 326 15

Clark v. *Poor, et al*, 274 U. S., 557, 72 L. Ed., 1200 10-11

Cohens v. *Virginia*, 19 U. S. (6 Wheat, 264), 5 L. Ed., 257 14

Hendrick v. *Maryland*, 235 U. S., 610, 59 L. Ed., 385 10-11

Kane v. *New Jersey*, 240 U. S., 160, 61 L. Ed., 222 10-11

Miedreich v. *Lowenstein*, 232 U. S., 236, 34 S. Ct., 309, 58 L. Ed., 584 15

New York v. *Zimmerman*, 278 U. S., 63, 73 L. Ed. (Adv. 52), 49 S. Ct., Rep., 61 16

Sprout v. *South Bend*, 277 U. S., 170, 72 L. Ed., 837, 48 S. Ct., Rep., 502 11-12

Ward v. *Krinkey*, 259 U. S., 503, 42 S. Ct., 529, 66 L. Ed., 1033 16

In the

Supreme Court of the United States

at the

October Term, A.D., 1930.

General No. 358.

INTERSTATE TRANSIT, INC.,
Appellant,

vs.

DICK LINDSEY, COUNTY COURT CLERK,
Appellee.

Appeal from the Supreme Court of Tennessee.

STATEMENT OF APPELLANT SHOWING JURISDICTION IN SUPREME COURT OF UNITED STATES TO REVIEW FINAL JUDGMENT OF SUPREME COURT OF TENNESSEE.

(This is an appeal under Section 237 (a) of the Judicial Code (Section 344 U. S. C., Title 28), as amended by Chap. 229, 43 Stat. 936, Act of Feb. 13, 1925, and effective May 13, 1925.)

In compliance with Paragraph 1 of Rule 12 of the Rules of the Supreme Court of the United States, Appellant, Interstate Transit, Inc., herewith files the following statement, particularly disclosing the basis on which it is contended this Honor-

able Court has jurisdiction to review on appeal the judgment or decree of the Supreme Court of Tennessee rendered in this case:

I.

STATEMENT OF CASE.

Appellant, Interstate Transit, Inc., is a corporation, organized and existing under the laws of the State of Ohio, with its home office or principal place of business located in the City of Cincinnati, Ohio.

*(Tr., pp. 3-4.)

Appellant is engaged in the transportation of passengers for hire by motor bus. Such transportation of passengers is exclusively interstate, over Federal Aid Highways. Its route is between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, and Nashville, Tennessee.

(Tr., p. 5.)

Appellee, Dick Lindsey, is the County Court Clerk of Davidson County, Tennessee (Nashville), and is charged by law with the duty of collecting privilege and occupation taxes for the State of Tennessee.

(Tr., p. 4.)

This proceeding seeks to review and reverse the action of Supreme Court of Tennessee in sustaining the validity of the following statute of Tennessee:

STATUTE ASSAILED AS BEING REPUGNANT TO COMMERCE CLAUSE OF FEDERAL CONSTITUTION.

Chapter No. 89, Public Acts of Tennessee for the year 1927, at page 283, of the published volume, is as follows:

(*References are to page numbers of typed transcript of the record certified by Clerk of Supreme Court of Tennessee).

CHAPTER No. 89

REVENUE BILL.

SENATE BILL No. 589.

(By Sub-committee of Finance, Ways and Means Committee of both Houses).

AN ACT ENTITLED, "An Act to provide for General Revenue for the State of Tennessee, and the counties and municipalities thereof, to be known as the General Revenue Bill."

. . . . . .

SECTION 4. *Be it Further Enacted*, That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege is hereinafter fixed, which privilege tax shall be paid to the County Court Clerk as provided by law for the collection of such revenue:

. . . . . .

STATE PRIVILEGE TAX ONLY.

Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State, for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provision, shall pay as follows:

Each bus carrying over 20 passengers, and less than 30 passengers, per annum, $500.00.

Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State.

(Public Acts of Tenn. for 1927, pp. 283, 284, 291.)

Said Act, in the *proviso* above referred to, provides that this tax shall be in lieu of all county and municipal taxes, and *that such privilege taxes accruing under this heading shall go*

and belong exclusively to the General Funds of the State. (Italics ours.)

Appellant, Interstate Transit, Inc., involuntarily and under protest, paid such privilege tax on eight 29-passenger busses used by it in Tennessee for the interstate transportation of passengers for hire and filed its original bill in the Chancery Court at Nashville, Tennessee, against the Appellee, Dick Lindsey, to recover the said privilege taxes paid by it under protest and involuntarily.

(Tr., pp. 9-10-11.)

It was averred in said bill that the tax levied in Section 4, of Chapter 89 of the Acts of Tennessee, for the year 1927, (1st) had no application to interstate operations, and (2nd) if applicable to interstate operations, same was an unreasonable burden on interstate commerce, and offensive to Article I, Section 8, Clause 3, of the Constitution of the United States (Commerce Clause).

(Tr., pp. 10-14.)

Appellee, Dick Lindsey, answered the said original bill, averring, among other things, that said tax applied to interstate commerce and was not offensive to the Federal Constitution.

(Tr., pp. 22, 23, 24.)

The Trial Court held that Appellant was engaged exclusively in transporting passengers for hire interstate, and was therefore not subject to the payment of the said tax, and rendered a judgment in favor of appellant and against appellee for the amount of the tax paid involuntarily.

(Tr., p. 32.)

The appellee herein appealed said case to the Supreme Court of Tennessee, which court reversed the Chancellor, and dismissed appellant's bill.

(Tr., pp. 33, 49.)

II.

JURISDICTION OF SUPREME COURT OF UNITED STATES.

U. S. C., Title 28, Section 344 (Jud. Code, Section 237), Paragraph (a), is as follows:

> "A final judgment or decree in any suit in the highest court of a state in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity; or where is drawn in question the validity of a statute of any state, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify, or affirm the judgment or decree of such state court, and may, in its discretion, award execution or remand the cause to the court from which it was removed by the writ."
>
> (Act of Feb. 13, 1925, Chap. 229, 43 Stat., 936.)

Under the Act of Congress of January 31, 1928, Chap. 14, 45 Stat. ———, as amended by the Act of April 26, 1928, the review which could be had in the Supreme Court of the United States on writ of error, as provided by Act of Feb. 13, 1925, Chap. 229, 43 Stat., 936, may now be obtained on appeal.

The Supreme Court of Tennessee is the highest court in the state in which a decision in the suit could be had.

Sections 1 and 2, Article 6, of the Constitution of Tennessee are as follows:

> "SECTION 1. *Judicial Power.*—The Judicial power of this state shall be vested in one Supreme Court, and in such circuit, chancery and other inferior courts as the

legislature shall from time to time, ordain and establish; in the judges thereof, and in justices of the peace. The legislature may also vest such jurisdiction in corporation courts as may be deemed necessary. Courts to be holden by justices of the peace may also be established.

"SECTION 2. *Supreme Court.*—The Supreme Court shall consist of five judges, of whom not more than two shall reside in any one of the grand divisions of the state. The judges shall designate one of their own number who shall preside as chief justice. The concurrence of three of the judges shall in every case be necessary to a decision. The jurisdiction of this Court shall be appellate only, under such restrictions and regulations as may from time to time be prescribed by law; but it may possess such other jurisdiction as is now conferred by law on the present Supreme Court. Said Court shall be held at Knoxville, Nashville and Jackson."

The judgment or decree of the Supreme Court of Tennessee is final since said Court is the highest of the state and its jurisdiction is appellate only.

Appellant's bill was dismissed by the said Court in the following language:

"We are of opinion that the Revenue Act applies and that the tax is valid. The decree must be reversed and the bill dismissed."

(Opinion Supreme Court, Tr., pp. 49-50.)

III.

NATURE OF CASE AND RULINGS.

There was drawn in question the validity of Chapter 89, Acts of Tennessee for the year 1927, on the ground of its being repugnant to the Constitution of the United States.

(Tr., pp. 10, 14.)

It was averred in the bill that the said privilege tax placed an unreasonable burden on interstate commerce, and was

repugnant to Article I, Section 8, Clause 3, of the Federal Constitution.

(Tr., pp. 10, 14.)

And the Supreme Court of Tennessee, in its published opinion in this case, said:

> "The corporation says that it transports interstate only, that therefore the Act does not, fairly construed, embrace it, and that if construed to embrace it the tax laid would be in contravention of the Commerce Clause of the Federal Constitution. (Art. I, Sec. 8, Clause 3.)
>
> "The state insists, (1) that the corporation transports both intra-state and interstate, and therefore comes within the terms of the Act, and (2) that even though its business is interstate only, the Act applies and the Federal Constitution does not prohibit its application."
>
> (Opinion Supreme Court, Tr., p. 41.)

The Supreme Court of Tennessee, in its decree and judgment, sustained the validity of Chapter 89, Acts of Tennessee for 1927, in the following language:

> "We are of opinion that the Revenue Act applies and that the tax is valid."
>
> (Opinion Supreme Court, Tr., p. 49.)

The Trial Court found as a matter of fact that appellant was engaged exclusively in interstate commerce.

(Tr., p. 32, Par. 3.)

And the Supreme Court of Tennessee, in its decree and judgment, found that appellant was doing interstate transportation only.

(Opinion Supreme Court, Tr., pp. 41-42.)

The Supreme Court of Tennessee, in its decree, held that Chapter 89, Acts of 1927, referred to as the Revenue Bill, embraces in its terms busses transportating interstate.

Said the Court:

> "We think this section of our Revenue Act embraces in its terms busses transporting interstate . . ."
> (Opinion Supreme Court, Tr., p. 43.)

And there further appears in the Opinion of the said Supreme Court the following:

> "Nor is this tax apparently unduly burdensome. Not only is the charge approximately the same on all motor vehicles of like passenger carrying capacity, whether traveling wholly within the state or not, but it is fixed according to a 'uniform, fair and practical standard.'".
> (Opinion Supreme Court, Tr., p. 44.)

In order to determine the question presented in this case, it was necessary to pass on the validity of Chapter 89, Acts of Tennessee, for 1927, as measured by the Commerce Clause of the Federal Constitution.

It was alleged in the original bill that the tax levied by said statute "is a revenue measure, and the proceeds therefrom go and belong exclusively to the general funds of the state. Such a tax on complainant's operations is an unreasonable burden on interstate commerce and therefore void. *The proceeds of such privilege taxes are not used in the construction and maintenance of highways, but go into the general funds of the state.*" (Italics ours.)
(Tr., pp. 14-15.)

The Supreme Court of Tennessee, in answer to this averment, which is admitted by the Stipulation (Tr., p. 28, Par. 3), said:

> "Clear as it is, both on principle and authority, that the state may exact a charge for the use of its highways, without reference to whither the user comes, or whence he goes, we are not of opinion that the form or name of the charge is determinative of the right. Nor are we persuaded that the right is defeated by a failure to desig-

nate in the Act by restrictive terms the fund into which the proceeds are primarily to go. This is hardly more than a matter of bookkeeping. Once in the general funds of the state, as provided by this Act, it is subject to distribution and allocation in any direction where it may be found to be most needed. If it meets or relieves the state's requirements in one direction, more is left for application in another. It is a contribution to the up-keep of the State's government as a whole, and a large part of this up-keep cost is the item of highways."

(Opinion Supreme Court, Tr., p. 46.)

The excerpt from the opinion of the Supreme Court of Tennessee, next hereinabove quoted, is contrary to the settled legislative policy of Tennessee with reference to its "police power" as it affects motor vehicles in interstate commerce.

To illustrate:

Chapter 58, Acts 1923, as amended, levies a tax of five (5) cents per gallon on all gasoline and distillate sold in Tennessee, *such fund to be used solely in the construction and maintenance of a highway system.* (Italics ours.)

Chapter 73, Acts 1917, is the Automobile Registration Law of Tennessee, requiring all motor vehicles to be licensed and a tag placed on such vehicles. Said license fee is graduated according to horsepower. Such fund derived from said licensing of motor vehicles is used exclusively for highway maintenance and construction, with the exception of ten (10) per cent thereof, which is used for enforcement of the Act.

Chapter 58, Acts 1929, is the Motor Vehicle Act of Tennessee. Said statute requires the filing of schedules, tariffs, rates, etc., with the Public Utilities Commission of Tennessee, as well as Public Liability Insurance on vehicles for hire, to protect persons in Tennessee who might be injured in their persons or property by the negligent operation of such vehicles for hire.

Under said act automobiles or busses for hire are required to pay a fee of Two Dollars and Fifty ($2.50) Cents per annum per passenger seat provided for passengers in each vehicle, such fund so derived to be used exclusively by said Utilities Commission in the enforcement of said act. Such fee is designated in the act as a fee "for the inspection, control and supervision of the business. . . ."

The three statutes above referred to, viz.: Gasoline tax, automobile registration law and motor vehicle regulation act, are the only statutes in Tennessee enacted for the purpose of raising funds for highway maintenance, construction and regulation. Said statutes are police regulations similar to those statutes litigated in the cases of *Hendrick* v. *Maryland*, *Clark* v. *Poor, et al.*, and *Kane* v. *New Jersey*, in the Supreme Court of the United States.

The statute in question is the Revenue Bill of Tennessee. Appellant has complied with the three statutes referred to above.

(Tr., pp. 28-29.)

IV.

SUBSTANTIAL FEDERAL QUESTION PRESENTED.

It will be observed, from the quotation from the Opinion of the Supreme Court of Tennessee, next hereinabove set out, that the said Court swept aside the distinction between the taxing power and the police power of the state.

The Supreme Court of Tennessee predicated its decision upon the cases of—

Hendrick v. *Maryland*, 235 U. S., 610, 59 L. Ed., 385.
Clark v. *Poor, et al*, 274 U. S., 557, 72 L. Ed., 1200.
Kane v. *New Jersey*, 240 U. S., 160, 61 L. Ed., 222.

Further, the Court said the case of *Sprout* v. *South Bend*, 277 U. S., 170, 72 L. Ed., 837, was in accord with the above cited cases.

The three cases, *Hendrick* v. *Maryland*, *Clark* v. *Poor* and *Kane* v. *New Jersey*, *supra*, clearly illustrate the police power of the states, while *Sprout* v. *South Bend*, *supra*, was an example of the taxing power.

The three cases referred to sustained regulatory measures as applied to interstate commerce, while the latter case clearly shows a tax, levied under the taxing power, is offensive and repugnant to the Commerce Clause of the Federal Constitution, and therefore void.

In the instant case, as in the case of *Sprout* v. *South Bend*, *supra*, the statute in question is the Revenue Bill, and the proceeds of the tax go into the General Funds of the state, while in the "police power" cases, the statutes were regulatory, and a substantial portion of the proceeds was used in highway maintenance and construction, as well as being used for enforcement of the acts in question.

Under the decision of the Supreme Court of Tennessee in the instant case, any business or occupation in interstate commerce (subject to state regulation) may be taxed by the state for the privilege of carrying on such business or occupation, and avoid the inhibition in the Constitution of the United States with reference to "regulating commerce among the several states" by referring the question to principles of *bookkeeping*. (Italics ours.)

The Supreme Court of the United States, since shortly after the adoption of the Constitution, has steadfastly held that a tax, under whatever guise, placed on the right to carry on commerce between the states, invades a field reserved for Federal regulation, and is therefore void.

Brown v. *Maryland* (1827), 12 Wheaton, 419.

And in numerous decisions the Court has been at pains to define the scope and extent of the authority of the states, under their police power, to levy a monetary exaction from persons, firms or corporations carrying on commerce between the states.

Sprout v. *South Bend, supra.*

The paramount and controlling question in the case, viz.: "what is the purpose of the levy, as shown by the statute," is swept aside by these words in the opinion of the Supreme Court of Tennessee:

> ". . . This is hardly more than a question of bookkeeping. Once in the General Funds of the state, *as provided by this Act*, it is subject to distribution and allocation in *any direction where it may be found to be most needed*. . . . It is a contribution to the state's government as a whole. . ." (Italics ours.)
> (Tr., p. 46.)

It is respectfully insisted that the Federal question presented is substantial since the decision of the Tennessee Court in the instant case has obliterated and destroyed the distinction between those two great powers of the states, "taxing" and "police."

If a person, firm or corporation engaged in an interstate business in Tennessee, which is a proper subject for police regulation, can be brought within the purview of a taxing statute by referring the question to a "matter of bookkeeping," then interstate commerce in Tennessee can be destroyed.

V:

DATES OF JUDGMENT AND APPLICATION FOR APPEAL

The said final decree or judgment of the Supreme Court of Tennessee was rendered on the 28th day of June, 1930, in an opinion for publication by Associate Justice, A. W. Chambliss. The opinion of the Supreme Court of Tennessee is found on pages 40-49 of the transcript.

(Tr., p. 50.)

On the 2nd day of August, 1930, appellant presented its petition for appeal to the Supreme Court of the United States to the Honorable Grafton Green, Chief Justice of the Supreme Court of Tennessee, which appeal was allowed on said date by the said Chief Justice.

(Tr., pp. 51-65.)

Said petition for appeal was filed in the Tennessee Supreme Court on the 2nd day of August, 1930.

(Tr., p. 65.)

Accompanying said petition for appeal, and filed on same date, was an assignment of errors.

(Tr., pp. 66-68.)

Bond for the said appeal in the sum of $1,000.00 has been made by appellant and filed with the Clerk of the Supreme Court of Tennessee, which bond is approved by the Chief Justice of Tennessee.

(Tr., pp. 75-76.)

On the 2nd day of August, 1930, the appeal in said case was issued by the Clerk of the District Court of the United States for the Middle Division of Tennessee, at Nashville, which was

filed with the Clerk of the Supreme Court of Tennessee, on the 2nd day of August, 1930.

(Tr., pp. 70-71.)

Citation to appellee issued on same date, signed by the Honorable Grafton Green, Chief Justice, returnable thirty (30) days therefrom. Service of said citation was acknowledged by counsel for appellee on August 2, 1930.

(Tr., pp. 77-78.)

On the 16th day of August, 1930, the Clerk of the Supreme Court of Tennessee transmitted to this Honorable Court as the transcript of the record, certain portions of the record in this case as designated by counsel, which case has been regularly docketed, and the record filed. Appearance of counsel for appellant has been entered.

VI.

CITATION OF CASES TO SUSTAIN JURISDICTION.

The Supreme Court of the United States has jurisdiction to review a decision in a suit in which the validity of a state statute was attacked on the ground of its alleged repugnancy to the Constitution of the United States, and the decision was in favor of its validity, though the state was a party to the suit and it might originally have been brought in the Supreme Court.

Cohens v. *Virginia*, 19 U. S. (6 Wheat., 264), 5 L. Ed., 257.

The Supreme Court of Tennessee held that a Federal question was made before it, and proceeded to determine it.

(Tr., pp. 41, 44.)

And the Supreme Court of the United States will regard a Federal question as having been made under such circumstances.

Miedreich v. *Lowenstein*, 232 U. S., 236, 34 S. Ct., 309, 58 L. Ed., 584.

The Supreme Court of Tennessee held that appellant was engaged exclusively in transporting passengers for hire by motor bus interstate.

(Opinion Supreme Court, Tr., pp. 41-42.)

And the transportation of passengers for hire by motor bus interstate is "commerce between the states."

Buck v. *Kuykendall*, 267 U. S., 307, 45 S. Ct., 324.
Geo. W. Bush v. *Maloy*, 267 U. S., 317, 45 S. Ct., 326.

So it follows that a Federal question was presented and its decision was necessary to the determination of the case, and the judgment as rendered could not have been rendered without deciding it.

Under such circumstances the Court has jurisdiction.

Adams v. *Russell*, 229 U. S., 363, S. Ct., 846, 57 L. Ed., 1224.

And a writ of error or appeal will not be dismissed for want of jurisdiction, where a Federal question is clearly raised, merely because the claim by which it is presented is not well founded.

Blythe v. *Hinckley*, 180 U. S., 333, 21 S. Ct., 390, 45 L. Ed., 557.

In the exercise of the appellate jurisdiction of the Federal Supreme Court over state Courts, the former Court is bound by the construction of a state law adopted by its Court of last resort. But the Federal Supreme Court, while bound by the construction of a state statute adopted by the state Court of last resort, is not concluded by its reasoning, but must exer-

cise an independent judgment when called upon to determine the Federal question, whether the Act, as construed and applied, is repugnant to the restrictions of the Federal Constitution.

Ward v. *Krinksy*, 259 U. S., 503, 42 S. Ct., 529, 66 L. Ed., 1033.

No particular form of words or phrases is essential to draw in question the validity of a state statute before the state Courts so as to give the Supreme Court of the United States jurisdiction to review an adverse decision, but it is sufficient if the claim of invalidity and the ground therefor are brought to the attention of the state Court.

New York, ex rel. v. *Chas. F. Zimmerman*, 278 U. S., 63, 73 L. Ed. (Adv. 52), 49 S. Ct. Rep., 61.

And the identical question presented for determination in this litigation has been adjudicated by this Court in favor of appellant, when it was held that a license fee imposed on an interstate carrier by bus cannot be sustained as a police measure if it is not imposed as an inspection scheme, and it does not appear that the proceeds are applied to defraying the expenses of such regulation, and that the amount collected is no more than is reasonably required for the purposes.

Sprout v. *South Bend*, 277 U. S., 163, 72 L. Ed., 833, 48 Sup. Ct. Rep., 502.

Dated this 25th day of August, 1930.

Respectfully submitted,

J. CARLTON LOSER,
THOS. L. TALLENTIRE,
Counsel for Appellant.

J. G. LACKEY,
H. LYNNE BARBER,
of Counsel.

FILE COPY

FILED
MAR 3 1931
CHARLES ELMORE CROPLEY
CLERK

(35280)

IN THE

Supreme Court of the United States

at the

OCTOBER TERM, A.D., 1930

No. 358

INTERSTATE TRANSIT, INC.
Appellant

VS.

DICK LINDSEY
Appellee

APPEAL FROM SUPREME COURT OF TENNESSEE

BRIEF OF APPELLANT INTERSTATE TRANSIT, INC.

THOS. L. TALLENTIRE,
J. CARLTON LOSER,
H. LYNNE BARBER,
J. G. LACKEY,
Counsel for Appellant.

BROWN PRINTING CO.

SUBJECT INDEX

Pages

APPEAL—
Section 237 (a) Judicial Code (Sec. 344, U. S. C. Title 28) ---- 1
GENERAL STATEMENT OF CASE ---- 1-3
STATEMENT OF CASE—
Engaged in Interstate Commerce ---- 3-4
Statute of Tennessee assailed ---- 5-6
Unreasonable burden on interstate commerce ---- 6-7
Transportation of persons interstate by motor bus is "commerce between states" ---- 7
Tax on such commerce repugnant to Commerce Clause of Federal Constitution ---- 7
Appellant not "doing business" in Tennessee ---- 7
PRAYER OF ORIGINAL BILL ---- 8
ANSWER OF APPELLEE ---- 8-9
STIPULATION OF FACTS ---- 9-10
DECREE OF TRIAL COURT ---- 11-12
APPEAL TO TENNESSEE SUPREME COURT ---- 12
PROCEEDINGS IN TENNESSEE SUPREME COURT ---- 12
OPINION OF SUPREME COURT (R. 20-26) ---- 13-15
PETITION FOR APPEAL U. S. SUPREME COURT 15-17
APPEAL ALLOWED ---- 17
ASSIGNMENT OF ERRORS ---- 17, 20-22
BOND ON APPEAL ---- 18
DESIGNATION OF RECORD ---- 18
JURISDICTIONAL STATEMENT ---- 19
BRIEF AND ARGUMENT ---- 22-60
Statute in question invalid ---- 22
Questions of fact found in Appellant's favor ---- 22
Trial Court found appellant engaged solely in interstate commerce ---- 22

Supreme Court of Tennessee found Appellant engaged solely in interstate commerce 23
Stipulation of Facts admits Appellant engaged solely in interstate commerce 23
Transportation passengers by motor bus interstate is "commerce between states" 23
Tax invalid 23-24
Opinion U. S. Court in *Sprout* v. *South Bend* 24-30
Excerpts opinion Tennessee Court 47-48
Monetary exaction limited to "police power" 49-51
Statute in question exercise of "taxing power" 55
Privilege to engage in interstate commerce 56
Excerpts from statute 56-57
Tax on right invalid 58
Conclusion 59-60
APPENDIX 61-86
Chap. 89, Acts 1927 (Statute assailed) 61-67
Chap. 58, Acts 1929 (Motor vehicle law) 67-76
Chap. 58, Acts 1923 (Gasoline tax) 77-80
Chap. 73, Acts 1917 (Automobile registration law) 81-86

TABLE OF CASES

Pages

Adams Exp. Co. v. *Ohio State Auditor*, 166 U. S., 185, 218; 41 L. Ed., 965, 976; 17 Sup. Ct. Rep., 604 ... 38

Alabama & N. O. Transportation Co. v. *Doyle*, 210 Fed., 173, 194 ... 45

Alpha Portland & Cement Co. v. *Mass.*, 266 U. S., 203, 218; 69 L. Ed., 916, 924; 44 A. L. R., 1219; 45 Sup. Ct. Rep., 477 ... 36

Arnold v. *Hanna*, No. 155, 275 U. S., —; 48 S. Ct., 212; 72 L. Ed., — ... 29

Atlantic & Pac. Tel. Co. v. *Philadelphia*, 190 U. S., 160, 164; 23 S. Ct., 817; 47 L. Ed., 995 ... 27, 32

Baltic Min. Co. v. *Mass.*, 231 U. S., 68, 87; 58 L. Ed., 127, 134; 34 Sup. Ct. Rep., 15 ... 36

Baltimore & Ohio S. W. R. R. Co. v. *Settle*, 260 U. S., 166, 171; 43 S. Ct., 28; 67 L. Ed., 189 ... 26

Barrett v. *New York*, 232 U. S., 14, 30, 31, 32; 34 S. Ct., 203; 58 L. Ed., 483, 490 ... 27, 30, 32, 58, 59

Binderup v. *Pathe Exchange*, 263 U. S., 263; 68 L. Ed., 388 ... 24

Bowman v. *Continental Oil Co.*, 256 U. S., 642, 647; 41 S. Ct., 606; 65 L. Ed., 1139 ... 30

Brown v. *Maryland* (1827), 12 Wheaton, 419 ... 24

Buck v. *Kuykendall*, 267 U. S., 307; 45 S. Ct., 324; 69 L. Ed., 623; 38 A. L. R., 286 ... 23, 30

Bush & Sons Co. v. *Maloy*, 267 U. S., 317; 45 S. Ct., 326, 327; 69 L. Ed., 627 ... 23, 30

City of Terre Haute v. *Kersey*, 159 Ind., 300; 64 N. E., 469; 95 Am. St. Rep., 298 ... 28

Clark v. *Poor*, 274 U. S., 554, 557, 577; 47 S. Ct., 702; 71 L. Ed., 1199, 1200 ... 27, 28, 32, 41, 43

Crutcher v. *Kentucky*, 141 U. S., 47, 58; 11 S. Ct., 851; 35 L. Ed., 649, 652 ... 30, 59

Cudahy Packing Co. v. *Hinkle*, 278 U. S., 460, 466; 49 Sup. Ct. Rep., 204; 73 L. Ed., 454 ... 35

Foote & Co. v. *Stanley*, 232 U. S., 494, 503; 34 S. Ct., 377; 58 L. Ed., 698 ---------- 27
Glouccster Ferry Co. v. *Penna.*, 114 U. S., 196, 217; 29 L. Ed., 158, 166; 1 Inters. Com. Rep., 382; 5 Sup. Ct. Rep., 826 ---------- 38
Helson v. *Ky.*, 279 U. S., 245, 249; 73 L. Ed., 683 ---35, 37
Hendrick v. *Maryland*, 235 U. S., 610, 622; 35 S. Ct., 140; 59 L. Ed., 385 ----------27, 28, 32, 41, 42
Hennington v. *Georgia*, 163 U. S., 299; 41 L. Ed., 166 59
Hogan v. *City of Indianapolis*, 159 Ind., 523; 65 N. E., 525 ---------- 29
Hosiery Mills v. *Portland*, 268 U. S., 325; 69 L. Ed., 982 ---------- 24
Interstate Busses Corp. v. *Blodgett*, No. 197, 276 U. S., 245; 48 S. Ct., 230; 72 L. Ed., 551------28, 32, 41, 42
Interstate Busses Corp. v. *Holyoke St. Ry. Co.*, 273 U. S., 45; 47 S. Ct., 299; 71 L. Ed., 530 ---------- 29
Kane v. *New Jersey*, 242 U. S., 160; 37 S. Ct., 30; 61 L. Ed., 222 ----------27, 28, 32, 41, 43
Kansas City Ry. v. *Kansas*, 240 U. S., 227, 231; 36 S. Ct., 261; 60 L. Ed., 617 ---------- 24
Kehrer v. *Stewart*, 197 U. S., 60; 25 S. Ct., 403; 49 L. Ed., 663 ---------- 29
Lake Shore & M. S. Ry. Co. v. *Ohio*, 173 U. S., 285; 43 L. Ed., 702 ---------- 59
Leloup v. *Mobile*, 127 U. S., 640, 645, 648; 8 S. Ct., 1380; 32 L. Ed., 311, 313, 314; 2 Inters. Com. Rep., 134 ----------24, 30, 38, 59
Looney v. *Crane Co.*, 245 U. S., 178, 187; 62 L. Ed., 230, 235 ---------- 37
Lyng v. *Mich.*, 135 U. S., 161, 166; 34 L. Ed., 150, 153; 3 Inters. Com. Rep., 143, 10 Sup. Ct. Rep., 725 -- 38
McCall v. *Calif.*, 136 U. S., 104; 34 L. Ed., 391; 3 Inters. Com. Rep., 181; 10 Sup. Ct. Rep., 881 ---- 40
Minot v. *Phila. W. & B. R. Co.*, 2 Abb. (U.S .), 323, 343, Fed. Cas. No. 9,645 ---------- 40
Morris v. *Duby*, 274 U. S., 135; 47 S. Ct., 548; 71 L. Ed., 966 ---------- 27

New York v. *Compaignie Generale Transatlantique*, 107 U. S., 59; 27 L .Ed., 383; 2 Sup. Ct., 87 ------ 40
Osborne v. *Florida*, 164 U. S., 650; 17 S. Ct., 214; 41 L. Ed., 586 ---------- 29
Ozark Pipe Line Corp. v. *Monier*, 266 U. S., 555, 562; 45 S. Ct. Rep., 184; 69 L. Ed., 439, 442 ------24, 38
Passenger Cases, 7 How., 283; 12 L. Ed., 702 ---------- 40
Phila. & Reading Ry. Co. v. *Hancock*, 253 U. S., 284; 40 S. Ct,, 512; 64 L. Ed., 907 ---------- 26
Postal Tel. Cable Co. v. *New Hope*, 192 U. S., 55; 24 S. Ct., 204; 48 L. Ed., 338---------- 27
Postal Tel. Cable Co. v. *Charleston*, 153 U. S., 692; 14 S. Ct., 1094; 38 L. Ed., 871 ---------- 29
Postal Tel. Cable Co. v. *Richmond*, 249 U. S., 252; 39 S. Ct., 265; 63 L. E., 590 ----------29, 30
Robbins v. *Taxing Dist.* (Tenn.), 120 U. S., 489, 496; 30 L. Ed., 694, 697 ----------24, 59
St. Louis v. *Western Union Tel. Co.*, 148 U. S., 92, 98; 13 S. Ct., 485; 37 L. Ed., 380; Id., 149 U. S., 465; 13 S. Ct., 990; 37 L. Ed., 810 ---------- 28
Smith v. *Alabama*, 124 U. S., 465; 31 L. Ed., 508 -- 58
Sprout v. *South Bend*, 198 Ind., 563; 153 N. E., 504; 49 A. L. R., 1198 ---------- 26
Sprout v. *South Bend*, 277 U. S., 163, 170, 171; 48 S. Ct. Rep., 502; 72 L. Ed., 833, 837 ----------24, 32, 34, 35, 37, 41, 58
State Freight Tax Case, 15 Wall, 232; 21 L. Ed., 146-- 39
Stockard v. *Morgan*, 185 U. S., 27; 46 L. Ed., 785; 22 Sup. Ct. Rep., 576 ---------- 40
Texas Transport v. *New Orleans*, 264 U. S., 150; 68 L. Ed., 611; 34 A. L. R., 907; 44 Sup. Ct. Rep., 242 ----------24, 40
Tomlinson v. *City of Indianapolis*, 144 Ind., 142; 43 N. E., 1; 36 L. Ed., 413 ---------- 28
Vidalia v. *McNeely*, 374 U. S., 676, 680; 71 L. Ed., 1292, 1295; 47 Sup. Ct. Rep., 758 ---------- 38
Ward v. *Krinsky*, 259 U. S., 503; 42 S. Ct. Rep., 529; 66 L. Ed., 1033 ---------- 47

Watters v. *Mich.*, 248 U. S., 65; 39 St Ct., 256; 68 L. Ed., 615 ---------- 29
Williams v. *Talladega*, 226 U. S., 404, 417; 33 S. Ct., 116; 57 L. Ed., 275 ---------- 30

STATUTES

Chapter 89, Acts of Tennessee, 1927 (Revenue Bill) 61-67
Chapter 58, Acts of Tennessee, 1929 (Motor Vehicle Law) ---------- 67-76
Chapter 58, Acts of Tennessee, 1923 (Gasoline Tax Law) ---------- 77-80
Chapter 73, Acts of Tennessee, 1917 (Automobile Registration Law) ---------- 81-86
Chapter 89, Acts of Tennessee, 1927, Section 4 ---- 5-6, 31
Chapter 89, Acts of Tennessee, 1927, Sections 12 and 17 ---------- 56-57

OPINION SUPREME COURT OF TENNESSEE

Interstate Transit, Inc. v. *Lindsey*, Vol. 29 (2d), No. 1, S. W. Rep. ---------- 257
Interstate Transit, Inc. v. *Lindsey*, 161 Tennessee -- ——

(35280)

IN THE

Supreme Court of the United States

at the

OCTOBER TERM, A.D., 1930

No. 358

INTERSTATE TRANSIT, INC.
Appellant

VS.

DICK LINDSEY
Appellee

May It Please the Court:

(This is an appeal under Sec. 237 (a) of the Judicial Code (Sec. 344, U. S. C., Title 28), as amended by Chap. 229, 43 Stat., 936, Act of Feb. 13, 1925, and effective May 13, 1925.)

This suit was instituted by the appellant, Interstate Transit, Inc., in Part I of the Chancery Court at Nashville, Tennessee, against Dick Lindsey, County Court Clerk of Davidson County, Tennessee, appellee, to recover One Thousand and Twelve ($1,012) Dollars, paid by it to the said Clerk as privilege taxes

on eight 29-passenger busses used by appellant in the interstate transportation of passengers for hire in Tennessee. Said $1,012 sought to be recovered in this case represents the tax and fees for one-quarter of a year on eight busses, amounting to One Hundred Twenty-six ($126.50) Dollars and Fifty Cents per bus.

(R. 5.)

In the Trial Court the Chancellor decreed in favor of appellant, Interstate Transit, Inc., holding it was entitled to recover the sum of $1,012.00 on the theory that appellant was engaged solely in the interstate transportation of passengers for hire in Tennessee, and that it was not "doing business" therein, so as to make it liable for the tax.

(R. 15.)

Appellee, Dick Lindsey, County Court Clerk, excepted to the action of the Chancellor in decreeing against him, and prayed an appeal to the Supreme Court of Tennessee sitting at Nashville.

(R. 16.)

The Supreme Court of Tennessee, upon consideration of the said appellee, Dick Lindsey, held that in the decree of the Chancellor there was error. It was therefore ordered and decreed by the Supreme Court of Tennessee that the decree of the Chancellor be reversed, and the original bill of appellant, Interstate Transit, Inc., be dismissed.

(R. 27.)

This proceeding seeks to review on appeal the decree and judgment of the said Supreme Court of Tennessee, and to reverse its action for the errors herein complained of.

(R. 36.)

STATEMENT OF THE CASE

Averments of the original bill of complainant, answer and stipulation of facts touching matters not material to a determination of the cause in this Honorable Court, will not be referred to in this brief.

Allegations of the Original Bill of Interstate Transit, Incorporated

That it is a corporation, organized and existing under the laws of the State of Ohio, with its home or principal place of business in the city of Cincinnati, Ohio.

(R. 1.)

That its charter of incorporation authorizes the operation for hire of motor busses for the transportation of passengers interstate as a common carrier.

(R. 1.)

That it is now, and has been for some time, engaged in the transportation of passengers for hire between the states, and that it operates, in addition to other lines, an interstate bus line between Cincinnati, Ohio,

and Atlanta, Georgia, over highways traversing the states of Ohio, Kentucky, Tennessee and Georgia.

(R. 1.)

That Dick Lindsey, appellee herein, is the regularly constituted, elected and acting County Court Clerk of Davidson County, Tennessee.

(R. 2.)

That it, in pursuance of and under its charter powers, and in the exercise of rights guaranteed under the Constitution of the United States, established a route between Cincinnati, Ohio, and Atlanta, Georgia, through Nashville, Tennessee, over highways traversing the states of Ohio, Kentucky, Tennessee and Georgia, and that said highways over said route in Tennessee and other states were constructed jointly by the Federal Government and the several states through which said route passes.

(R. 2.)

That it is engaged exclusively in the transportation of passengers interstate and not intrastate. No passenger is received in Tennessee for transportation by it in Tennessee, but all passengres transported by appellant are discharged in a state other than the state in which such passenger embarks, and the route traversed by the appellant in the operation of its lines is interstate, and it carries passengers exclusively interstate.

(R. 2.)

That Chapter 89 of the Public Acts of Tennessee for the year 1927 (Revenue Bill) provides as follows:

Section 4 thereof (page 284 of published volume) provides:

> "That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as hereinafter fixed, which privilege tax shall be paid to the County Court Clerk as provided by law for the collection of such revenue."
>
> (R. 2-3.)

At pages 290 and 291 of published volume it is provided as follows:

STATE PRIVILEGE TAX ONLY

> "Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provision, shall pay as follows:
>
> "Each bus carrying over twenty passengers and less than thirty passengers, per annum ---------- $500.00.
>
> "Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading shall

go and belong exclusively to the general funds of the State."

(R. 4.)

That it paid to Dick Lindsey, County Court Clerk of Davidson County, Tennessee, a privilege tax on eight 29-passenger busses for one quarter of a year, in the sum of One Hundred Twenty-Six ($126.50) Dollars and Fifty Cents each, amounting to One Thousand and Twelve ($1,012.00) Dollars. Said privileges taxes were paid involuntarily and under protest, and that this suit is instituted to recover said sum.

(R. 5.)

That said privilege tax is a revenue measure and the proceeds therefrom go and belong exclusively to the general funds of the State. Such a tax on complainant's operations is an unreasonable burden on interstate commerce, and therefore void. The proceeds of such privilege taxes are not used in the construction and maintenance of highways, but go into the general funds of the State.

(R. 7.)

That it has paid for and obtained license tags which are attached to its busses operating in Tennessee. The funds derived from the payment for such license tags are used directly in the construction and maintenance of Tennessee highways. In addition to this, complainant pays a state tax of five (5) cents per gallon for gasoline purchased in

Tennessee, which five-cents tax per gallon on gasoline is used exclusively for highway construction and maintenance in Tennessee.

(R. 7-8.)

That said privilege tax of Five Hundred ($500.00) Dollars per annum per bus on busses carrying over twenty passengers and less than thirty passengers, in addition to hundreds of dollars paid annually for the gasoline tax, and a license tax of about Seventy-Five ($75.00) Dollars per year per bus, is grossly excessive and exorbitant, and is an unreasonable burden on interstate commerce.

(R. 8.)

That the interstate transportation of passengers for hire by motor-propelled vehicles over the highways of the United States is "commerce between the states," and is protected by the Commerce Clause of the Federal Constitution.

(R. 8.)

That Federal aid in the construction of highways in the several states makes clear the purpose of Congress that said highways shall be open to interstate commerce. Any tax placed on such business by the State as compensation for the privilege of carrying on such business, is an unreasonable burden on such commerce, and in conflict with Article 1, Section 8, Clause 3, of the Constitution of the United States of America.

(R. 8.)

That it is not "doing business" in Tennessee, but is engaged exclusively in the transportation of persons for hire by motor vehicle from points in one state to points in another state, over Federal-aid highways.

(R. 9.)

That it has the right to carry on said business under the Federal Constitution, it being a field reserved by the Commerce Clause for Federal regulation.

(R. 9.)

Prayer of the Bill

1. That subpoena to answer issue, requiring him to answer the bill, but his oath is waived.

2. That the Court decree complainant is not liable for a privilege tax on any of its busses operating interstate in Tennessee under Chapter 89 of the Public Acts of 1927.

3. That complainant have and recover of the defendant the sum of $1,012.00 and the costs of this cause.

4. That complainant have such further and other relief as it may be entitled to.

(R. 9.)

Answer of Dick Lindsey, County Court Clerk

It is denied that complainant is not liable for a privilege tax as claimed in the original bill, but on

the contrary the defendant avers that the complainant is liable for the privilege tax mentioned under the terms and provisions of Chapter 89 of the Public Acts of 1927.

(R. 11.)

That said Act levies a privilege tax against the business of complainant and that said levy is in all things valid, and in no way impinges on any article of the Constitution of the United States.

(R. 11.)

That the defendant alleges that the operations of complainant, in and through Tennessee, bring it under the Revenue Act in question, and that the complainant is liable for the tax provided in said Act. It is denied that said tax constitutes an unreasonable burden on interstate commerce, or any burden at all—it is denied that said Revenue Act, or that part of it levying a privilege tax against the complainant, is unconstitutional and void as violating the Commerce Clause of the Federal Constitution, or for any other reason.

(R. 11.)

Stipulation of Facts

No proof was taken in this cause, but certain facts were agreed upon, as follows:

1. That the Interstate Transit, Inc., is a corporation, organized and existing under the laws of the State of Ohio, and that its charter of incorporation

authorizes it to engage in the interstate transportation of persons for hire by motor bus.

(R. 13.)

2. That the Interstate Transit, Inc., paid to the County Court Clerk, Dick Lindsey, the sum of One Thousand and Twelve ($1,012.00) Dollars as a privilege tax on eight 29-passenger busses, used by complainant in the interstate transportation of passengers for hire in Tennessee, and that said payment was for one-quarter of a year's privilege tax, and includes a clerk's fee of $1.50 per bus. That said tax was paid by complainant involuntarily, under protest and by reason of duress employed by the defendant.

(R. 13.)

3. That the tax sought to be recovered in this cause was levied by defendant under Chapter 89, Acts of 1927 (Revenue Bill), pages 290 and 291 of the Published Acts. That at the time the tax in question was paid involuntarily, the complainant was engaged exclusively in the interstate transportation of passengers for hire by motor bus in Tennessee, . . . and had complied with all the police regulations of the State, including the fees for a license tax and the tax of five (5) cents per gallon on gasoline.

(R. 13-14.)

5. That the tax complained of was levied under the Revenue Bill of the State of Tennessee for the

year 1927, and that said funds go and belong exclusively to the general funds of the State, and that no portion of said tax is used directly in the construction and maintenance of highways, nor does any part of said tax go to or is used by any agency or board in Tennessee charged with the duty of regulating or supervising bus operations, either intra- or interstate.

(R. 14.)

6. That the Interstate Transit, Inc., operates its busses interstate, over a route or highway constructed jointly by the Federal Government and the State of Tennessee, and maintained by the State of Tennessee, the line being between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, and Nashville, Tennessee.

(R. 14.)

Decree of the Chancellor

This cause came on to be heard on the 27th day of February, 1930, before the Honorable R. B. C. Howell, Chancellor, upon the original bill, answer thereto, stipulation as to evidence, and upon argument of counsel, from a consideration of all of which the Court was pleased to find as follows:

(a) That the complainant, Interstate Transit, Inc., is engaged solely in the interstate transportation of passengers for hire in Tennessee, and is not "doing business" therein so as to make it liable for the tax.

(R. 14-15.)

(b) That the complainant, Interstate Transit, Inc., have and recover of the defendant, Dick Lindsey, County Court Clerk, the sum of One Thousand and Twelve ($1,012.00) Dollars, together with the costs hereof.

(R. 16.)

Appeal of Dick Lindsey, County Court Clerk

The defendant, Dick Lindsey, excepted to the action of the Chancellor in decreeing in favor of the Interstate Transit and against him, and prayed and perfected an appeal to the Supreme Court of Tennessee sitting at Nashville.

(R. 16.)

Proceedings in the Supreme Court of Tennessee, at Nashville, Tennessee

The fifth assignment of error in the Supreme Court of Tennessee by Dick Lindsey, County Court Clerk, is the only assignment material at this time, which is as follows:

> "The Chancellor erred in refusing to hold and decree that the complainant (Interstate Transit, Inc.) was liable for said privilege tax, even though engaged exclusively in the operation of interstate busses, because such tax can be lawfully levied and collected from a bus operator using the highways of the State in interstate operations, as such operator's fair and reasonable

contribution to the cost of constructing and maintaining the highways of the State; and it makes no difference that the tax is not levied and collected for the use of the highway fund itself, so long as the State, out of their funds, looks after the proper and necessary maintenance and upkeep of the highways over which the operator carries on his operation as is done by the State in this case."

(R. 19.)

Opinion of Supreme Court
(R. 20-26)

The Supreme Court of Tennessee held that the Revenue Act in question applied, and that the tax was valid, reversing the decree of the Chancellor and dismissing the bill of the Interstate Transit, Inc.

(R. 26.)

Said the Court:

"This appeal calls for a construction in application of section 4, Chapter 89, of the Revenue Act of 1927. This bill was filed to recover privilege taxes paid to the Clerk under protest by an Ohio corporation operating passenger motor busses, known as Colonial Stages, between Cincinnati, Ohio, through Kentucky and Tennessee, via Louisville, Nashville and Chattanooga to Atlanta, Georgia.

* * * *

"The corporation says that it transports interstate only, that therefore the Act does not, fairly construed, embrace it, and that if construed

to embrace it, the tax levied would be in contravention of the Federal Constitution. (Article 1, Section 8, Clause 3.)

"The State insists (1) that the corporation transports both intra-state and interstate, and therefore comes within the terms of the Act, and (2) that even though its business is interstate only, the Act applies and the Federal Constitution does not prohibit its application.

"The Chancellor found on the record made that the corporation was doing interstate transportation only, and that the State is precluded by the Commerce Clause of the Federal Constitution from collection of the tax. While the proof shows some disposition on the part of the employees of the corporation to wink at and make easy an evasion of the interstate policy of the corporation, through the use of tickets calling for destinations immediately over the State line, we think the record as a whole sustains the finding of the Chancellor that the rules and regulations of and the instructions issued by the corporation, together with the form and recital of its tickets, make out a case of interstate business only.

(R. 21.)

* * * *

"Clear as it is, both on principle and authority, that the State may exact a charge for the use of its highways, without reference to whither the user comes, or whence he goes, we are not of the opinion that the form or name of the charge is determinative of the right. Nor are

we persuaded that the right is defeated by a failure to designate in the Act by restrictive terms the fund into which the proceeds are primarily to go. *This is hardly more than a matter of bookkeeping. Once in the general funds of the State, as provided by this Act, it is subject to distribution and allocation in any direction where it may be found to be most needed. If it meets or relieves the State's requirements in one direction, more is left for application in another.* (Italics ours.)

(R. 24.)

* * * *

"We are of opinion that the Revenue Act applies and that the tax is valid. The decree must be reversed and the bill dismissed."

(R. 26.)

Said decree and opinion of the Supreme Court of Tennessee was entered on the 28th day of June, 1930.

(R. 27.)

Petition of Interstate Transit, Inc. For Appeal to Supreme Court of The United States

On August 2, 1930, the appellant, Interstate Transit, Inc., filed its petition for appeal to the Supreme Court of the United States, averring that on June 28, 1930, the Supreme Court of Tennessee made and entered a final order and judgment in this cause in favor of Dick Lindsey, County Court Clerk of Da-

vidson County, Tennessee, in which final order and judgment, and proceedings had prior thereunto in this case, certain errors were committed greatly to the prejudice of the petitioner, all of which were set out in detail in the assignment of errors, which was filed with the petition in the Supreme Court of Tennessee.

(R. 37-38.)

The Interstate Transit, Inc., further showed that Chapter 89 of the Public Acts of Tennessee for the year 1927, Section 4 thereof, as construed by the Honorable Supreme Court of Tennessee, was in violation of Article I, Section 8, Clause 3, of the Constitution of the United States, in that it placed an unreasonable burden on interstate commerce.

(R. 35.)

The petitioner further showed that the said judgment of the Supreme Court of the State of Tennessee was and is a final judgment in the highest court in the State of Tennessee, in which Court a decision in said suit could or can be had,

(R. 35.)

The Interstate Transit, Inc., further showed in said petition that a Federal question was made in said case, to wit, as hereinbefore set out, and that said judgment of the Supreme Court of Tennessee was, and is, repugnant to and in conflict with the Federal Constitution, and particularly with Article I, Section 8, Clause 3, of the Constitution of the Uni-

ted States as aforesaid, and the decision of said Federal question was necessary to the judgment rendered.

(R. 36.)

The appeal as prayed for in said petition was allowed on the 3rd day of August, 1930, and bond fixed therefor in the sum of $1,000.00 by the Honorable Grafton Green, Chief Justice of the Supreme Court of the State of Tennessee.

(R. 36.)

Assignment of Errors

Interstate Transit, Inc., filed an assignment of errors at the time said appeal was allowed by the Chief Justice of the Supreme Court of Tennessee, on August 2, 1930.

(R. 37-38.)

Order Allowing Appeal

On August 2, 1930, an order was entered in the Supreme Court of Tennessee, allowing the appeal sought in this case to the Supreme Court of the United States, upon the execution of bond in the sum of $1,000.00, conditioned as the law directs.

(R. 39.)

Writ of error issued by the Clerk of the United States District Court for the Middle District of Tennessee on August 2, 1930.

(R. 39.)

Bond for the said appeal in the sum of $1,000.00 was executed and approved by the Chief Justice of the Supreme Court of Tennessee on August 2, 1930, and citation issued in the usual form showing service on L. D. Smith, Attorney-General for the State of Tennessee.

(R. 39.)

Statement of Points Relied Upon And Designation of Record

The appellant, Interstate Transit, Inc., filed in this Honorable Court on August 22, 1930, a Statement of Errors upon which it intended to rely in this case, and the parts of the record which it thought necessary for the consideration thereof.

(R. 39-40.)

Said Statement of Errors was the same as the Assignment of Errors filed in the Supreme Court of Tennessee with the petition for appeal on August 2, 1930.

(R. 40-41.)

The record as designated by appellant, Interstate Transit, Inc. (R. 41-42), has been filed by the Clerk of this Honorable Court, being file No. 35280.

Said Statement of Errors, together with Designation of Record, was served upon the appellee, Dick Lindsey, by delivering to him a copy thereof on the 20th day of August, 1930, which service was

acknowledged by L. D. Smith, Attorney-General for the State of Tennessee.

(R. 39-42.)

Jurisdictional Statement of The Appellant, Interstate Transit, Inc.

In compliance with Paragraph 1 of Rule 12, of the Rules of the Supreme Court of the United States, appellant, Interstate Transit, Inc., filed a printed statement, particularly disclosing the basis on which it was contended this Honorable Court had jurisdiction to review on appeal the judgment or decree of the Supreme Court of Tennessee rendered in this case.

Said printed statement was dated August 25, 1930, a copy of which was furnished counsel for appellee, Dick Lindsey. Forty copies of said statement were forwarded to the Clerk of this Honorable Court and filed therein on August 28, 1930. There was also forwarded to said Clerk under date of August 26, 1930, proof of service of statement as to jurisdiction in this case.

On October 20, 1930, the Court, after consideration of the Jurisdictional Statement filed in this case, pursuant to Rule 12, announced a finding "that probable jurisdiction has been noted."

ASSIGNMENT OF ERRORS

Appellant, Interstate Transit, Inc., respectfully makes the following Assignment of Errors, upon which it relies and urges in the prosecution of its appeal from the decree made by the Supreme Court of Tennessee on the 28th day of June, 1930:

I.

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4 of Chapter 89 of the Acts of Tennessee for the year 1927, is a valid and reasonable tax on interstate commerce.

II.

That the Supreme Court of Tennessee erred in decreeing that the privilege tax of Five Hundred ($500.00) Dollars per annum per bus engaged exclusively in interstate commerce, by transporting passengers for hire across the State of Tennessee, as levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is reasonable, and consonant with the Commerce Clause of the Federal Constitution, being Article I, Section 8, Clause 3 thereof.

III.

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied on interstate bus operators by Section 4, Chapter 89, Acts of Tennessee for 1927, is consonant with the Commerce Clause

of the Federal Constitution, although the proceeds from said tax go and belong exclusively to the general funds of the State; is fixed in an arbitrary amount, and is the same for busses doing intra- and interstate business.

IV.

That the Supreme Court of Tennessee erred in decreeing that the privilege tax levied by Section 4, Chapter 89, Acts of Tennessee for 1927, is valid and constitutional, although said tax is found in a revenue measure, and no part of the proceeds is used for highway maintenance and construction.

V.

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for the year 1927, is a regulatory measure, when the proceeds of said tax go into the general funds of the State and is found in the 1927 Revenue Bill of Tennessee.

VI.

That the Supreme Court of Tennessee erred in decreeing that Section 4 of Chapter 89, Acts of Tennessee for the year 1927, is a reasonable charge on exclusive interstate bus operations as their fair contribution to the cost of constructing and maintaining the public highways, when appellant and all others similarly situated are required, under the laws and

statutes of Tennessee, to pay a registration or license fee per vehicle to said state, according to capacity and weight of such vehicle; an excise tax of five (5) cents per gallon on gasoline purchased and used in Tennessee, and an inspection fee of $2.50 per bus seat per anum, the entire proceeds from the three levies being impressed with a trust, being exacted for highway maintenance and construction exclusively, and to cover the cost of inspection of equipment so used. Said three levies are in addition to the tax in question.

(R. 37-38.)

BRIEF AND ARGUMENT

It is respectfully insisted by appellant, Interstate Transit, Inc., that Chapter 89, Public Acts of Tennessee for the year 1927, as construed by the Supreme Court of Tennessee, is repugnant to Article I, Section 8, Clause 3, of the Federal Constitution (Commerce Clause), and therefore void.

All questions of fact, upon which the jurisdiction of this Honorable Court depends, have been found and determined in favor of appellant.

The Chancellor (trial court) found that the "Interstate Transit, Inc., is engaged solely in the interstate transportation of passengers for hire in Tennessee, and it not 'doing business' therein so as to make it liable for the tax."

(R. 15, Par. 3.)

The Supreme Court of Tennessee held that the Interstate Transit, Inc., was engaged in interstate business only.

(R. 21.)

And the Stipulation of Facts, agreed between counsel representing the parties, shows appellant "was engaged exclusively in the interstate transportation of passengers for hire by motor bus in Tennessee," since certain disputed facts were held by the Chancellor and the Supreme Court insufficient to constitute "doing business" in Tennessee.

(R. 13.)

Therefore, it follows that appellant, Interstate Transit, is engaged solely in the interstate transportation of passengers for hire by motor bus.

Interstate Commerce

The transportation of passengers for hire by motor bus interstate is "commerce between the states."

Buck v. *Kuykendall*, 267 U. S., 307, 45 S. Ct., 324.

Geo. W. Bush v. *Maloy*, 267 U. S., 317, 45 S. Ct., 326.

Tax on Interstate Commerce Invalid

It long has been settled that a state cannot lay a tax on interstate commerce in any form, whether on the transportation of subjects of commerce, the re-

ceipts derived therefrom, or the occupation or business of carrying it on.

Ozark Pipe Line Corp. v. *Monier*, 266 U. S., 555, 45 S. Ct., 184.
Leloup v. *Mobile*, 127 U. S., 640, 648, 8 S. Ct., 1380; 32 L. Ed., 311.
Kansas City Ry. v. *Kansas*, 240 U. S., 227, 231, 36 S. Ct., 261; 60 L. Ed., 617.
Brown v. *Maryland* (1827), 12 Wheaton, 419.
Robbins v. *Taxing District* (Tennessee), 120 U. S., 489; 30 L. Ed., 694.
Binderup v. *Pathe Exchange*, 263 U. S., 263; 68 L. Ed., 388.
Texas Transport v. *New Orleans*, 264 U. S., 150; 68 L. Ed., 611.
Sprout v. *South Bend*, 277 U. S., 163, 171, 72
Hosiery Mills v. *Portland*, 268 U. S., 325; 69 L. Ed., 982.
L. Ed., 833, 837; 48 S. Ct. Rep., 502.

Sprout v. *South Bend*, next hereinabove cited, is directly in point. Defendant City of South Bend, by legislative grant, prohibited the operation on its streets of any motor bus unless licensed by the city. Sprout, a resident of South Bend, Ind., operated regularly a bus with seats for twelve persons between points within South Bend and the City of Niles, Mich. He paid the state registration fee, but refused to pay the city license. The license fee varied with seating capacity and for a 12-passenger bus was $50.00 a year. The act provided that operating within South Bend without paying the license fee con-

stituted a misdemeanor. Sprout refused to obtain the license and was arrested and fined $50.00 by the municipal court. Sprout defended, among other things, that the ordinance violated the commerce clause of the Federal Constitution. The fine imposed was sustained by the highest court of the State of Indiana. (198 Ind., 563, 153 N. E., 504.)

In an opinion by Mr. Justice Brandeis, concurred in by the entire Court, it is said:

> "The claim that the ordinance violates the commerce clause presents questions requiring serious consideration. Sprout did not carry passengers from one point in South Bend to another. He was not a local carrier. Primarily his business was interstate. But the agreed facts show that he was not engaged exclusively in interstate commerce. The distance from the north city limits of South Bend to Niles is about nine miles. Half of this distance lies within Indiana. Along the highway traversed within that State lies many suburban residences and one village tributary to South Bend. Sprout purported to offer transportation from that city only to persons destined to points in Michigan. He required that all passengers from South Bend pay the fare to some Michigan point. But, in fact, he served suburban passengers. He made stops habitually at points within Indiana in order to permit passengers from South Bend to leave the bus before the State line was reached. The legal character of this suburban bus traffic

was not affected by the device of requiring the payment of a fare fixed for some Michigan point or by Sprout's professing that he sought only passengers destined to that State. The actual facts govern. For this purpose, the destination intended by the passenger when he begins his journey and known to the carrier, determines the character of the commerce. Compare *Philadelphia & Reading Ry. Co.* v. *Hancock*, 253 U. S., 284, 40 S. Ct., 512, 64 L. Ed., 907; *Baltimore & Ohio S. W. R. R. Co.* v. *Settle*, 260 U. S., 166, 171, 43 S. Ct., 28, 67, L. Ed., 189. The suburban traffic was intrastate commerce.

"The Supreme Court of Indiana, *Sprout* v. *City of South Bend*, 198 Ind., 563, 153 N. E., 504, 49 A. L. R., 1198, did not pass upon the question whether Sprout, by reason of the suburban traffic, was engaged also in intrastate traffic. Nor did it consider whether his rights as an interstate carrier would be affected by his engaging also in intrastate business. It affirmed the judgment of the trial court on the broad ground that, since Sprout made use of the streets in 'the indiscriminate solicitation and acceptance of passengers,' he was 'within the police power of the State to license and regulate both driver and vehicle by way of providing for the safety, security and general welfare of the public.'

"It is true that, in the absence of Federal legislation covering the subject, the State may impose, even upon vehicles using the highways ex-

clusively in interstate commerce, non-discriminatory regulations for the purpose of insuring the public safety and convenience; that licensing or registration of busses is a measure appropriate to that end, and that a license fee no larger in amount than is reasonably required to defray the expenses of administering the regulations may be demanded. *Hendrick* v. *Maryland*, 235 U. S., 610, 622, 35 S. Ct., 140, 59 L. Ed., 385; *Kane* v. *New Jersey*, 242 U. S., 160, 37 S. Ct., 30, 61 L. Ed., 222; *Morris* v. *Duby*, 274 U. S., 135, 47 S. Ct., 548, 71 L. Ed., 966; *Clark* v. *Poor*, 274 U. S., 554, 47 S. Ct., 702, 71 L. Ed., 1199. . . . But it does not appear that the license fee here in question was imposed as an incident of such a scheme of municipal regulation; nor that the proceeds were applied to defraying the expenses of such regulation; nor that the amount collected under the ordinance was no more than was reasonably required for such a purpose. It follows that the exaction of the license fee cannot be sustained as a police measure. *Atlantic and Pacific Telegraph Co.* v. *Philadelphia*, 190 U. S., 160, 164, 23 S. Ct., 817, 47 L. Ed., 995; *Postal Telegraph Cable Co.* v. *New Hope*, 192 U. S., 55, 24 S. Ct., 204, 48 L. Ed., 338; *Barrett* v. *New York*, 232 U. S., 14, 32, 34 S. Ct., 203, 58 L. Ed., 483. Compare *Foote & Co.* v. *Stanley*, 232 U. S., 494, 503, 34 S. Ct., 377, 58 L. Ed., 698.

"It is true also that a State may impose, even on motor vehicles engaged exclusively even in interstate commerce, a reasonable charge as

their contribution to the cost of constructing and maintaining the public highways. *Hendrick* v. *Maryland*, 235 U. S., 610, 622, 35 S. Ct., 140, 59 L. Ed., 385; *Interstate Busses Corporation* v. *Blodgett*, No. 197, 276 U. S., 48 S. Ct., 230, 72 L. Ed., —, decided February 20, 1928, and this power also may be delegated in part to a municipality by appropriate legislation. Compare *St. Louis* v. *Western Union Telegraph Co.*, 148 U. S., 92, 98, 13 S. Ct., 485, 37 L. Ed., 380; Id., 149 U. S., 465, 13 S. Ct., 990, 37 L. Ed., 810. An exaction for that purpose may be included in a license fee. *Hendrick* v. *Maryland*, *supra*; *Kane* v. *New Jersey*, 242 U. S., 160, 168-169, 37 S. Ct., 30, 61 L. Ed., 222; *Clark* v. *Poor*, 274 U. S., 554, 47 S. Ct., 702, 71 L. Ed., 1199. But no part of the license fee here in question may be assumed to have been prescribed for that purpose. A flat tax, substantial in amount, and same for busses plying the streets continuously in local service and for busses making, as so many interstate busses, only a single trip daily, could hardly have been designed as a measure of the cost or value of the use of the highways. And there is no suggestion, either in the language of the ordinance or in the construction put upon it by the Supreme Court of Indiana, that the proceeds of the license fees are, in any part, to be applied to the construction or maintenance of the city streets. Compare *Tomlinson* v. *City of Indianapolis*, 144 Ind., 142, 43 N. E., 1, 36 L. Ed., 413; *City of Terre Haute* v. *Kersey*, 159 Ind., 300, 64 N. E., 469, 95 Am. St. Rep., 298;

Hogan v. *City of Indianapolis*, 159 Ind., 523, 65 N. E., 525.

"It follows that on the record before us the exaction of the license fee cannot be sustained either as an inspection fee or as an excise, for the use of the streets of the city. It remains to consider whether it can be sustained as an occupation tax. A state may, by appropriate legislation, require payment of an occupation tax from one engaged in both intrastate and interstate commerce. *Postal Telegraph Cable Co.* v. *Charleston*, 153 U. S., 692, 14 S. Ct., 1094, 38 L. Ed., 871; *Osborne* v. *Florida*, 164 U. S., 650, 17 S. Ct., 214, 41 L. Ed., 586; *Kehrer* v. *Stewart*, 197 U. S., 60, 25 S. Ct., 403, 49 L. Ed., 663; *Watters* v. *Michigan*, 248 U. S., 65, 39 S. Ct., 256, 68 L. Ed., 615. Compare *Interstate Busses Corporation* v. *Holyoke Street Ry. Co.*, 273 U. S., 45, 47 S. Ct., 299, 71 L. Ed., 530; *Arnold* v. *Hanna*, No. 155, 275 U. S., —, 48 S. Ct., 212, 72 L. Ed., —, decided January 16, 1928. And it may delegate a part of that power to a municipality. Compare *Postal Telegraph Co.* v. *Richmond*, 249 U. S., 252, 257, 39 S. Ct., 265, 63 L. Ed., 590. But in order that the fee or tax shall be valid it must appear that it is imposed solely on account of the intrastate business; that the amount exacted is not increased because of the interstate business done; that one engaged exclusively in interstate commerce would not be subject to the imposition; and that the person taxed could discontinue the intrastate business without withdrawing also from the interstate

business. *Leloup* v. *Port of Mobile*, 127 U. S., 640, S. Ct., 1380, 32 L. Ed., 311; *Crutcher* v. *Kentucky*, 141 U. S., 47, 58, 11 S. Ct., 851, 35 L. Ed., 649; *Barrett* v. *New York*, 232 U. S., 14, 30, 34, S. Ct., 203, 58 L. Ed., 483; *Bowman* v. *Continental Oil Co.*, 256 U. S., 642, 647, 41 S. Ct., 606, 65 L. Ed., 1139. Compare *Williams* v. *Talladega*, 226 U. S., 404, 417, 33 S. Ct., 116, 57 L. Ed., 275; *Postal Telegraph Cable Co.* v. *Richmond*, 249 U. S., 252, 39 S. Ct., 265, 63 L. Ed., 590. The Supreme Court of Indiana, far from construing the ordinance as applicable solely to busses engaged in intrastate commerce, assumed that it applied to busses engaged in interstate commerce, and that Sprout was so engaged. The privilege of engaging in such commerce is one which a State cannot deny. *Buck* v. *Kuykendall*, 267 U. S., 307, 45 S. Ct., 324; 69 L. Ed., 623, 38 A. L. R., 286; *Bush & Sons Co.* v. *Maloy*, 267 U. S., 317, 45 S. Ct., 326, 327, 69 L. Ed., 627. A State is equally inhibited from conditioning its exercise on the payment of an occupation tax."

It will be observed that the tax complained of in the instant case is levied as a revenue measure, and the proceeds go into the general funds of the State, no part of which is used for highway construction or maintenance. No suggestion is even offered in the Revenue Bill as to its being a police regulation.

In fact, the Act in question (Revenue Bill, 1927)

negatives the idea of an exercise of the police power. Its caption is as follows:

> "An Act entitled 'An Act to provide for General Revenue for the State of Tennessee and the Counties and Municipalities thereof, to be known as the General Revenue Bill.' "
>
> (See copy Act in Appendix, page 61.)

Further illustrating that the Act in question is an exercise of the taxing power, we find the following in Section 4 thereof:

> "That each vocation, occupation and business hereinafter named in this section is hereby declared to be a privilege, and the 'rate of taxes on such privilege shall' be as hereinafter fixed. . . . "
>
> (Appendix, page 63.)

And the law-making body, in order to remove any doubt as to the purpose of the levy, after taxing each interstate bus carrying over twenty (20) passengers and less than thirty (30) passengers, Five Hundred ($500.00) Dollars per annum, provided as follows:

> "Provided, that this tax shall be in lieu of all county and municipal taxes; provided, further, privilege taxes accruing under this heading *shall go and belong exclusively to the General Funds of the State.*" (Italics ours.)
>
> (Appendix, page 64.)

It does not appear that the tax here in question was imposed as an incident to a scheme of regulation or inspection, nor that the proceeds were to be applied to defraying the expense of such a scheme of regulation or inspection, nor that the amount levied under the Act was no more than was reasonably required for the purpose. So it follows that the privilege tax enacted cannot be sustained as a police measure.

Sprout v. *South Bend*, 277 U. S., 163, 171; 48 S. Ct. Rep., 502.

Atlantic & Pacific Tel. Co. v. *Philadelphia*, 190 U. S., 160, 164; 23 S. Ct., 817; 47 L. Ed., 995.

Barrett v. *New York*, 232 U. S., 14, 32; 34 S. Ct., 203; 58 L. Ed., 483.

The Supreme Court of Tennessee sustained the Act in question on the theory that the tax exacted was an excise or reasonable charge for the use of the highways.

(R. 24.)

In support of its position there was cited:

Sprout v. *South Bend*, 277 U. S., 163, 171.

Hendricks v. *Maryland*, 235 U. S., 610, 622; 59 L. Ed., 385.

Interstate Busses v. *Blodgett*, 276 U. S., 245; 72 L. Ed., 551.

Clark et al. v. *Poor*, 274 U. S., 557; 71 L. Ed., 1200.

(R. 22-23.)

Kane v. *New Jersey*, 242 U. S., 160; 61 L. Ed., 222.

(R. 26.)

There is no suggestion, either in the Act or in the opinion of the Court, that the levy was an excise or license fee exacted as a fair contribution to the cost of constructing and maintaining the public highways.

It cannot be assumed that any part of the tax here in question was prescribed for such a purpose. A flat tax of $500.00 per bus per annum, *and same for busses using the highways daily in intrastate business as busses crossing the State daily in interstate business, could hardly have been designed as a proper measure of the cost or value of the use of the highways.*

(R. 23.)

On the contrary, the Act specifically provides that the tax is for the privilege of engaging in the business of an interstate carrier, and that the *proceeds shall go into the general funds of the State.* And the Tennessee Court so observed, but referred to the proposition as a "matter of bookkeeping."

(R. 24.)

Quoting from the opinion of the Tennessee Court in the instant case (R. 24), we find this:

> "Clear as it is, both on principle and authority, that the State may exact a charge for the use of its highways, without reference to whither the user comes, or whence he goes, we are not of opinion that the form or name of the charge is determinative of the right. Nor are we persuaded that the right is defeated by a failure to designate in the Act by restrictive terms the

fund into which the proceeds are primarily to go. This is hardly more than a matter of bookkeeping. Once in the general funds of the State, as provided by this Act, it is subject to distribution and allocation in any direction where it may be found to be most needed. If it meets or relieves the State's requirements in one direction, more is left for application in another. It is a contribution to the upkeep of the State's government as a whole, and a large part of this upkeep cost is the item of highways."

(R. 24-25.)

While the opinion of the Court above quoted suggests that a large part of the upkeep cost of the government is the item of highways, it is not intimated that any part of the general funds of the State is used in highway maintenance or construction. On the contrary, highway funds for maintenance and construction are derived from the proceeds of two police measures, Chapter 58, Acts of 1923, as amended (Gasoline Tax of Five (5) Cents per gallon), and Chapter 73, Acts of 1917, as amended (Automobile Registration and License Law). Said two Acts are appended hereto at pages 77 and 81. There is no suggestion in the Act in question or in the construction put upon it by the Supreme Court of Tennessee, that the proceeds of the tax are, in any part, to be applied to the construction and maintenance of the highways of the State.

So it follows that the exaction of the privilege tax cannot be sustained either as an inspection fee,

or as an excise or charge for the use of the highways of the State.

Sprout v. *South Bend*, 277 U. S., 163, 48 S. Ct. Rep., 502.

While a state may, by appropriate legislation, require payment of an occupation tax from one engaged in both intrastate and interstate commerce, it is to be recalled that the Chancellor held appellant to be engaged solely in interstate commerce, and the Supreme Court of Tennessee likewise so held.

(R. 21.)

And it was insisted by appellant in the courts below that such was the intention of the legislature in the passage of the Act.

(R. 6-7.)

It is respectfully insisted that it necessarily follows that the Supreme Court of Tennessee has sustained the validity of a tax placing a direct burden on interstate commerce.

Cudahy Packing Co. v. *Hinkle*, 278 U. S., 460, 49 Sup. Ct. Rep., 204, 73 L. Ed., 454, and *Helson* v. *Kentucky*, 279 U. S., 245, 49 Sup. Ct. Rep., 279, 73 L. Ed., 683, are recent cases passing upon the validity of a direct tax on interstate commerce, exacted as a charge for the right or privilege to carry on such business.

In Cudahy Packing Co. v. *Hinkle*, 278 U. S., 460, 466, the Court said:

"In *Alpha Portland & Cement Co.* v. *Massachusetts*, 266 U. S., 203, 218, 69 L. Ed., 916, 924, 44 A. L. R., 1219, 45 Sup. Ct. Rep., 477, we said:

" 'It must now be regarded as settled that a State may not burden interstate commerce or tax property beyond her borders under the guise of regulating or taxing intrastate business. So to burden interstate commerce is prohibited by the commerce clause, and the 14th Amendment does not permit taxation of property beyond the State's jurisdiction. The amount demanded is unimportant when there is no legitimate basis for the tax. So far as the language of *Baltic Min. Co.* v. *Massachusetts*, 231 U. S., 68, 87, 58 L. Ed., 127, 134, 34 Sup. Ct. Rep., 15, tends to support a different view, it conflicts with conclusions reached in later opinions and is now definitely disapproved.'

"*Baltic Min. Co.* v. *Massachusetts* had sometimes been regarded as lending support to the theory that a tax which really burdens interstate commerce and reaches property beyond the State may be sustained if relatively small. This view did not harmonize with the princples approved by *Looney* v. *Crane Co.*, and was expressly disapproved by *Alpha Portland Cement Co.* v. *Massachusetts.*

"It follows that the decree of the Court below is erroneous and must be reversed."

This case is in line with *Looney* v. *Crane Co.*, 245 U. S., 178, 187, 62 L. Ed., 230, 235.

In the Cudahy Packing Co. case, Mr. Justice Brandeis dissented. In his dissenting opinion he said:

> "If the statute sought to impose a tax on corporations engaged wholly in interstate commerce, or if the taxes laid a direct burden upon interstate commerce, or if they were laid upon property without the State, or if they were unjustly discriminating, the fact that they are small in amount would, of course, be immaterial. *Sprout* v. *South Bend*, 277 U. S., 163 171, 72 Law Ed., 833, 837."

A state cannot interfere with interstate commerce through the imposition of a tax which is in effect a tax for the privilege of transacting such commerce.

> *Helson* v. *Kentucky*, 279 U. S., 245, 249, 73 Law Ed., 683.

The Court in this case said:

> "Regulation of interstate and foreign commerce is a matter committed exclusively to the control of Congress, and the rule is settled by innumerable decisions of this Court, unnecessary to be cited, that a State law which directly burdens such commerce by taxation or otherwise, constitutes a regulation beyond the power of the State under the Constitution. It is likewise settled that transportation by ferry from one State

to another is interstate commerce and immune from the interference of such State legislation. *Gloucester Ferry Co.* v. *Pennsylvania*, 114 U. S., 196, 217, 29 L. Ed., 158, 166, 1 Inters. Com. Rep., 382, 5 Sup. Ct. Rep., 826; *Vidalia* v. *McNeely*, 374 U. S., 676, 680, 71 L. Ed., 1292, 1295, 47 Sup. Ct. Rep., 758. The power vested in Congress to regulate commerce embraces within its control all the instrumentalities by which that commerce may be carried on. *Gloucester Ferry Co.* v. *Pennsylvania*, supra, p. 204. A State cannot 'lay a tax on interstate commerce in any form, whether by way of duties laid on the transportation of the subjects of that commerce, or on the receipts derived from that transportation, or on the occupation or business of carrying it on.' *Leloup* v. *Mobile*, 127 U. S., 640, 648, 32 L. Ed., 311, 314, 2 Inters. Com. Rep., 134, 8 Sup. Ct. Rep., 1380; *Lyng* v. *Michigan*, 135 U. S., 161, 166, 34 L. Ed., 150, 153, 3 Inters. Com. Rep., 143, 10 Sup. Ct. Rep., 725; *Ozark Pipe Line Corp.* v. *Monier*, 266 U. S., 555, 562, 69 L. Ed., 439, 442, 45 Sup. Ct. Rep., 184. While a State has power to tax property having a situs within its limits, whether employed in interstate commerce or not, it cannot interfere with interstate commerce through the imposition of a tax which is, in effect, a tax for the privilege of transacting such commerce. *Adams Exp. Co.* v. *Ohio State Auditor*, 166 U. S., 185, 218, 41 L. Ed., 965, 976, 17 Sup. Ct. Rep., 604.

"The following are a few of the cases illus-

trating the many applications of these principles:

" 'A State statute imposing a tax upon freight, taken up within the State and carried out of it, or taken up without the State and brought within it, was held, in the State Freight Tax Case, 15 Wall, 232, 21 L. Ed., 146, to constitute a regulation of interstate commerce in conflict with the Constitution. The Court said (pp. 275, 276):

" 'Then why is not a tax upon freight transported from State to State a regulation of interstate transportation, and, therefore, a regulation of commerce among the States? Is it not prescribing a rule for the transporter, by which he is to be controlled in bringing the subjects of commerce into the State, and in taking them out? The present case is the best possible illustration. The Legislature of Pennsylvania has in effect declared that every ton of freight taken up within the State and carried out, or taken up in other States and brought within her limits, shall pay a specified tax. The payment of that tax is a condition, upon which is made dependent the prosecution of this branch of commerce. And as there is no limit to the rate of taxation she may impose, if she can tax at all, it is obvious the condition may be made so onerous that an interchange of commodities with other States would be rendered impossible. The same power that may impose a tax of 2 cents per ton upon coal carried out of the State, may

impose one of $5.00. Such an imposition, whether large or small, is a restraint of the privilege or right to have the subjects of commerce pass freely from one State to another without being obstructed by the intervention of State lines.'

" 'A State or State municipality is without power to impose a tax upon persons for selling or seeking to sell the goods of a non-resident within the State prior to their introduction therein (*Stockard* v. *Morgan*, 185 U. S., 27, 46 L. Ed., 785, 22 Sup. Ct. Rep., 576); or for securing or seeking to secure the transportation of freight or passengers in interstate or foreign commerce (*McCall* v. *California*, 136 U. S., 104, 34 L. Ed., 391, 3 Inters. Com. Rep., 181, 10 Sup. Ct. Rep., 881; *Texas Transport & Terminal Co.* v. *New Orleans*, 264 U. S., 150, 68 L. Ed., 611, 34 A. L. R., 907, 44 Sup. Ct. Rep., 242.) Nor can a State impose a tax on alien passengers coming by vessels from foreign countries. *New York* v. *Compaignie Generale Transatlantique*, 107 U. S., 59, 27 L. Ed., 383, 2 Sup. Ct. Rep., 87. And see Passenger Cases, 7 How., 283, 12 L. Ed., 702. In *Minot* v. *Philadelphia*, W. & B. R. Co., 2 Abb. (U. S.), 323, 343, Fed. Cas., No. 9,645, it was held that a State law imposing a tax for the use within the State of locomotives, passenger and freight cars, and for the use of rolling stock generally, was a license fee exacted for the privilege of such use. It appearing that the larger portion of the locomotives, etc., were used for the interstate transportation of persons and property, the Court held that the stat-

ute constituted a regulation of such commerce. In the course of the opinion, by Mr. Justice Strong, it is said:

> " 'It is of national importance that in regard to such subjects there should be but one regulating power, for if one State can directly tax persons and property passing through it, or indirectly, by taxing the use of means of transportation, every other may; thus commercial intercourse between States remote from each other may be destroyed.' "

Sprout v. *South Bend*, 277 U. S., 163, is controlling in the case at bar.

It is respectfully insisted by the Interstate Transit, Inc., that the Supreme Court of Tennessee has failed to distinguish between the two great powers of sovereignty, "taxing" and "police." The opinion of said Court cites as authorities supporting it:

Sprout v. *South Bend*, 277 U. S., 170.
Hendrick v. *Maryland*, 235 U. S., 610.
Interstate Busses Corp. v. *Blodgett*, 276 U. S., 245.
Clark et al. v. *Poor et al.*, 274 U. S., 577, and
Kane v. *New Jersey*, 242 U. S., 160.

The Sprout case announced the rule, or restated the rule, that a tax placed on the right to engage in interstate commerce was offensive to the Federal Constitution, while the other cases set out next hereinbefore illustrate the police power of the states.

They do not sustain nor support the decree and opinion of the Supreme Court of Tennessee in the instant case, but clearly illustrate the proposition of law contended for by the appellant herein.

In *Hendrick* v. *Maryland*, 235 U. S., 610, plaintiff-in-error was tried before a Justice of the Peace under a charge of violating the Motor Vehicle Law, in that he had driven his automobile from the District of Columbia into the State of Maryland without having procured a certificate of registration required by the Motor Vehicle Law; that is, had not procured a license tax under the laws of Maryland and had not registered with the Motor Vehicle Department. He defended on the ground that it was an attempt to regulate interstate commerce. The Court held that this was but an exercise of police power uniformly recognized as belonging to the states, and essential to the preservation of the health, safety and comfort of other citizens. The Act specifically provided that all moneys collected under this provision must be paid into the State Treasury to be used in the construction, maintaining and repairing the streets of Baltimore, and road building aided by the county or the state itself.

Appellant has complied with a similar statute in Tennessee.

Interstate Busses Corporation v. *Blodgett*, 276 U. S., 245, sustains the validity of mileage tax on interstate bus operations, levied as an excise on the use of the highway. The Act attacked as being an

unreasonable burden on interstate commerce specifically provided that the proceeds of the tax were to be applied to the maintenance of public highways in the State.

This again illustrates an exercise of the police power, and clearly supports the insistence of appellant and is no authority for the Supreme Court of Tennessee.

Clark et al. v. *Poor et al.*, 274 U. S., 554, contested the validity of a license fee on an interstate carrier for the maintenance and repair of the highways, and for the administration and enforcement of the laws governing the use of same.

Again this illustrates an exercise of the police power of the State and does not support the Supreme Court of Tennessee, but is authority for the position taken by appellant.

Kane v. *New Jersey*, 242 U. S., 160, was an attack upon the New Jersey Automobile Law by a non-resident of that state, which required automobilists using the public highways to obtain a license so to do and register the same under the statute. Kane, a resident of New York, was arrested while driving his automobile on the public highways of New Jersey without registering his automobile in said state and obtaining a license under the authority of same. It was contended by Kane, among other things, that the statute was invalid as to him, a non-resident, because it regulated interstate commerce.

As in the Hendrick case, the New Jersey act provided that moneys received in accordance with the provisions of the Act were to be used as a fund for the repair of the improved roads throughout the state, and the only difference between the Maryland case and the New Jersey case was, it appeared, that the fees collected under the New Jersey statute exceeded the amount required to defray the expenses of maintaining the regulation and inspection department.

This, too, is an exercise of the police power and illustrates clearly the proposition contended for by appellant, and in no wise supports the Tennessee Court.

The Act of the State of Ohio considered in the Clark case is identical with Chapter 58, Acts of 1929, known as the Tennessee Motor Vehicle Regulatory Act.

(See said Act in Appendix, page 67.)

The Tennessee Motor Vehicle Regulatory Act has been complied with by appellant and is in no wise involved in this litigation.

From a consideration of all the cases by the United States Supreme Court, it appears that all monetary exactions by a state from a business carrying on interstate commerce are direct burdens on such commerce, and therefore invalid, unless levied under the police power of the state; in other words, a regu-

lation affecting the public health, safety, convenience or welfare.

As was stated in *Alabama & N. O. Transportation Co.* v. *Doyle*, 210 Fed., 173, 194:

> "We may assume for the purposes of this opinion that this inquiry, whether the burden is 'direct' is only another form of the question, whether the Act is within the police power."

It will be observed by the Court that in every case affecting motor vehicles in interstate commerce where a monetary exaction is levied by the states on such commerce, the proceeds are primarily to be used for regulation, inspection, maintenance and construction of the highways and roads so used in interstate commerce. It is not insisted by appellant in this brief that an excise or license fee cannot be exacted by the State of Tennessee on motor vehicles engaged exclusively in interstate commerce as a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways, but it is respectfully insisted that such cannot be done under the taxing power, and such has not been done in Tennessee in the Act in question. If appellant's operations in Tennessee can be brought within the purview of the statute in question by referring the question to a "matter of bookkeeping," then interstate commerce in Tennessee can be destroyed.

Under the decision of the Supreme Court of Tennessee in the instant case, any occupation in interstate commerce (subject to State regulation), may be taxed by the State for the privilege of carrying on such business or occupation, and avoid the inhibition in the Constitution of the United States with reference to "regulating commerce among the several states" by referring the question to principles of bookkeeping.

The paramount and controlling question in the case, namely, "What is the purpose of the levy, as shown by the statute?" is swept aside by these words in the opinion of the Supreme Court of Tennessee:

> " . . . This is hardly more than a question of bookkeeping. Once in the general funds of the State, *as provided by this Act*, it is subject to distribution and allocation in *any direction where it may be found to be most needed.* . . . This is a contribution to the State's government as a whole. . . ." (Italics ours.)
>
> (R. 24-25.)

In the exercise of appellate jurisdiction of the Federal Supreme Court over state courts, the former court is bound by the construction of a state law adopted by its court of last resort. But the Federal Supreme Court, while bound by the construction of a state statute adopted by the said court of last resort, *is not concluded by its reasoning*, but must exercise an independent judgment when called

upon to determine the Federal question, whether the Act, as construed and applied, is repugnant to the restriction of the Federal Constitution.

Ward v. *Krinksy*, 259 U. S., 503; 42 S. Ct. Rep., 529; 66 Law Ed., 1033.

While not attempting in any wise to open a state question in this Honorable Court, we deem it proper to quote further from the opinion of the Supreme Court of Tennessee for the purpose of attacking its reasoning, since this Honorable Court will exercise an independent judgment in determining the Federal question.

Said the Supreme Court of Tennessee:

> "We think this section of our Revenue Act embraces in its terms busses transporting interstate. The caption of the pertinent paragraph reads, 'all busses . . . running into other States,' and in its body it levies the tax on 'each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip,' and not liable under the preceding paragraphs. A purpose is indicated by the ten-mile restriction to avoid burdening interstate transportation unreasonably, relieving from this tax in cases of incidental and inconsequential crossing of, or entry over, the State lines in the course of through traveling.

"We come then to this single issue: Is the power of the State to impose 'a reasonable charge' upon busses making use of its highways for interstate transportation limited to a regulation or license fee under the police power, as insisted, and confined to the legislation which appropriates the funds exclusively and specifically to highway purposes, either of regulation or maintenance? This insistence seems to be met by Mr. Justice Brandeis in *Clark* v. *Poor*, *supra*, who, after referring to the contention therein made that all of the tax is not used for maintenance and repair of the highways, said:

" 'This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs.' "

(R. 22-23.)

The preceding paragraphs of the Revenue Bill under consideration, and referred to in the first paragraph of the opinion of the Supreme Court quoted above, levies a privilege tax—

First: On busses operating and carrying passengers on regular or fixed routes from one point in this State to another point in this State; and

Second: On each bus operating and carrying passengers on regular or fixed routes from one point in one county to another point in the same county.

Therefore, a bus operator carrying passengers over a route interstate, but doing intrastate business, would not be liable under said preceding paragraphs, and the section of the Revenue Bill levying a tax on busses running into other states and carrying passengers in Tennessee for a distance of more than ten miles per trip was not enacted for the purpose of avoiding burdening interstate transportation unreasonably, but was for the purpose of levying a tax upon a class of bus operations not referred to in the preceding paragraphs of the Revenue Bill; that is, busses traversing highways interstate but engaged in intrastate business. The ten-mile restriction referred to by the Supreme Court of Tennessee as being a legislative intent not to burden unreasonably interstate transportation, in our humble opinion, was not for the purpose stated by the Tennessee Court, but to relieve incidental and inconsequential intrastate business in Tennessee from the payment of the tax as levied on intrastate business.

It is respectfully insisted by appellant that the power of the State to impose a reasonable charge upon busses making use of its highways for interstate transportation is limited to a regulation or license fee under the police power, or an excise for use of the highways, likewise under the police power, but does not insist, as suggested by the Supreme Court, that such legislation must appropriate the funds de-

rived therefrom *exclusively* and *specifically* to highway purposes, either of regulation or maintenance.

It would seem from the opinion of the Supreme Court of Tennessee that it was of the opinion that there was some great power residing in the State to exact the license fee or tax from interstate commerce operations different from the taxing and police powers.

We insist that the statute under consideration was enacted under one of these two great powers—the taxing power or the police power—and in order to determine under which power the Legislature acted, we must look to the terms and provisions of the Act in question. If, from the four corners of the Act, it appears that same is an exercise of the taxing power, there can certainly be no justification for its enactment since it is repugnant to the commerce clause of the Federal Constitution. If from a consideration of the statute it appears that it was enacted under the police power, then the next question is its reasonableness.

The Supreme Court of Tennessee seems to be of the opinion that the purpose for which the Act was passed, and the use to which the proceeds are put, are immaterial, and in support of its reasoning, it suggested that Mr. Justice Brandeis in *Clark* v. *Poor*, *supra*, held that the use to which the proceeds are to be put was not material.

Our contention is that these questions are material in determining whether the Act in question is an exercise of the taxing or the police power. Mr. Justice Brandeis in *Clark* v. *Poor, supra,* in answer to an allegation that "all of the tax is not used for maintenance and repair of highways," held that this was immaterial; that is, all of the tax was not used for highway purposes. It will be borne in mind that in the Clark case, the tax was assessed for a *proper purpose* and was not *objectionable* in amount. Therefore, the use to which the proceeds were put was not a matter which concerned the plaintiff in that case.

Then, too, it will be recalled that Mr. Justice Brandeis delivered the opinion of the Court in the Sprout case, which held that a $50.00 exaction on the right to engage in interstate commerce in Indiana was repugnant to the Constitution of the United States and void.

As stated before, this argument is not presented for the purpose of opening a State question, but to respectfully show that the reasoning of the Supreme Court of Tennessee in the instant case is unsound and unsupported by any decision of the Supreme Court of the United States referred to by the said Tennessee Court in its opinion, or by any other decision of said Court.

Further quoting from the opinion of the Supreme Court of Tennessee:

"An interstate passenger bus might as consistently contend against a toll charge over a bridge as against a charge for traversing a State-owned highway. The record shows that the fare for a single passenger across the State is $3.50, and a tax on a twenty-passenger bus is $350.00 per year. Assuming that a bus makes but one trip a day, it traverses more than two hundred (200) miles of this highway at a charge of less than $1.00 for each fifteen (15) to twenty (20) passengers. The tax thus appears to be entirely reasonable."

(R. 24.)

The Court is in error as to the rate of taxes per year on appellant's bus, when it states that such tax is $350.00 per year. The tax as set out in the Revenue Bill and which is sought to be recovered in this case, is Five Hundred ($500.00) Dollars per annum. Therefore, the reasoning of the Court as to the reasonableness of the statute is inapplicable.

It is certainly unreasonable and so burdens interstate commerce, and is discriminatory, when a local bus of the same size and capacity which runs up and down the highways of Tennessee all day and all night, is taxed $500.00 per annum, and an interstate bus that makes but one trip daily across the State, as suggested by the Supreme Court of Tennessee, is likewise charged $500.00 per annum.

We respectfully state to this Honorable Court that we are not attacking the principles of law announced

by the Tennessee Court in support of its opinion, or the principles announced in the several cases referred to therein, but are insisting that they are inapplicable in the case at bar, do not support it, and are not authority in support of the conclusion of the Tennessee Court, but that the cases of the United States Supreme Court cited therein announce the principles for which appellant is insisting; that is to say, that in determining whether a State statute is an exercise of the police or the taxing power, we must look to the four corners of the statute, and a taxing statute cannot be sustained as an Act of the police power by referring the question to a system of bookkeeping, or the like.

And the fact that a State *may* levy an excise for the use of the roads by an interstate bus, will not justify a direct tax on interstate commerce as a charge for the privilege of engaging in such business.

The opinion of the Tennessee Court attempts to sustain its decree *on a proposition of power* residing in the State rather than on the *legislative intent* expressed in the statute.

Even had the Legislature, in the statute in question, provided that the levy was an excise tax as a reasonable charge for the use of Tennessee highways by interstate busses, and further provided that the proceeds (or a substantial part thereof), were to be used for highway regulation, construction and main-

tenance, there would be presented a serious question as affecting its validity, since the amount of the tax is determined by the seating capacity of the bus rather than the equitable mileage basis tax.

Seating capacity as a means of determining the amount of the tax does not remotely suggest that the levy in question is an excise on the use of the highways. Then, too, the tax is the same on all busses of like seating capacity, whether used in intra- or interstate commerce.

Under the police power an excise tax on interstate busses must bear some relation to the amount of the use of the highways, so as to avoid unreasonableness. It is apparent that a flat tax based on seating capacity, on all interstate busses, without reference to the miles traversed in the State by said busses, would be grossly inequitable and unreasonable. For instance, an interstate bus operating between Memphis, Tenn., and Washington, D. C., via Nashville, Knoxville, Johnson City and Bristol, Tenn., would traverse some seven hundred (700) miles of Tennessee highways, while such an operation between Louisville, Kentucky, and Birmingham, Alabama, via Hopkinsville, Kentucky, and Nashville, Tennessee, would traverse slightly more than one hundred (100) miles of Tennessee highways. If the busses used in such operations were of the same seating capacity; that is to say, a 29-passenger bus were used on the Memphis-to-Washington

route, and a 29-passenger bus were used on the Louisville, Kentucky, and Birmingham, Alabama, via Nashville, Tennessee, the tax would be $500.00 per annum under the statute, which would result in an unfair discrimination against the Louisville-Birmingham line. The only theory on which an excise tax can be exacted on interstate operations, is that the *use* bears some relation to the *benefits* obtained.

But the statute in question is a part of the General Revenue Bill for Tennessee, levied in a flat sum, the proceeds to go into the general funds of the State, and the same is levied as a *tax* on the *privilege* of *engaging* in such *business*.

And the fact that the tax is the same on all busses of like seating capacity, without reference to miles traversed in the State, indicates the levy is a *privilege* for the *right* to carry on *commerce* rather than an excise on the use of the roads. The discriminating feature of the statute that results from the construction placed upon it by the Tennessee Court is further evidence that the exaction is a tax on the right to carry on the business. Surely the Legislature would not have levied an excise for the use of the roads so unreasonable and discriminatory as is illustrated above.

A cursory examination of the Act in question will show conclusively that the tax sought to be recovered in this case is a levy made by the State of Tennessee

upon the right to engage in interstate commerce in said State. Section 12 of Chapter 89 of the Acts of Tennessee, 1927 (Revenue Bill), provides as follows:

> " . . . That it shall be unlawful for any person, firm or corporation to exercise any of the foregoing privileges before complying with the provisions of this Act; and any one exercising any of the foregoing privileges without paying the tax prescribed shall be guilty of a misdemeanor and liable to a fine of not less than $5.00, nor more than $50.00 per day for each day such privilege is exercised without license. . . ."

It is not only made unlawful by the Act in question to engage in interstate commerce before paying the tax, but it is made the duty of the Judges of the courts of this State having criminal jurisdiction to especially give in charge to, and have a grand jury of his court especially investigate all offenses defined in this Act, and inquisitorial powers are given to grand juries in the premises.

Section 17 of the Act in question provides as follows:

> "Section 17. Be it further enacted, That it shall be the duty of each Judge of the courts of the State having criminal jurisdiction to especially give in charge to and have a grand jury of his court especially investigate all offenses defined in this Act, and inquisitorial powers are hereby given to grand juries in the premises. It

shall be the duty of the respective district attorneys of the State, upon the information, at the request of any reputable citizens of the State, to investigate and prosecute *ex officio* all the offenses defined in this Act."

It therefore follows, under the construction placed upon this Act by the Supreme Couprt of Tennessee, that if any person, firm or corporation desires to engage in Tennessee in the interstate transportation of passengers for hire by motor bus, he or it must, before beginning operations, and as a condition precedent to engaging in such business, obtain a privilege tax receipt from the County Court Clerk, and in the case of the 29-passenger bus, as in the instant case, pay the sum of $500.00 therefor.

To do otherwise renders him or it guilty of a crime under the statute in question and liable to a fine of not less than $5.00 nor more than $50.00 per day for each day such privilege is exercised without a license, and it is made the duty of the Criminal Judges to especially charge the grand juries of the State thereto, as well as requiring the district attorneys to prosecute *ex officio* such an offense.

This provision of the Revenue Act in question not only negatives the idea of the levy being an excise upon the use of the roads, but clearly shows that the Act is an exercise of the taxing power and renders the statute unconstitutional and void, since the Su-

preme Court of Tennessee has held that the said Act applies to exclusive interstate bus operations.

Barrett v. *New York*, 232 U. S., 30, 31, 58 L. Ed., 490.

The Court said in the above cited case:

"But, if the above mentioned sections are to be deemed to require that a license must be obtained as a condition precedent to conducting the interstate business of an express company, we are of the opinion that, so construed, they would be clearly unconstitutional."

"A State is inhibited from conditioning the right to engage in interstate commerce on the payment of an occupation tax.

Sprout v. *South Bend*, 277 U. S., 163, 171; 72 L. Ed., 833, 837; 48 S. Ct. Rep., 502.

The Supreme Court of Tennessee suggests that the levy is an excise under an exercise of police power.

Even though the statute in question was enacted under the police power, such does not justify the imposition of a direct burden upon interstate commerce.

Barrett v. *New York*, 232 U. S., 31; 58 L. Ed., 490.

Smith v. *Alabama*, 124 U. S., 465; 31 L. Ed., 508.

Hennington v. *Georgia*, 163 U. S., 299; 41 L. Ed., 166.

Lake Shore & M. S. R. Co. v. *Ohio*, 173 U. S., 285; 43 L. Ed., 702.

Local police regulations cannot go so far as to deny the right to engage in interstate commerce, or to treat it as a local privilege and prohibit its exercise in the absence of a local license.

Barrett v. *New York*, 232 U. S., 31; 58 L. Ed., 490.

Crutcher v. *Kentucky*, 141 U. S., 47; 35 L. Ed., 649, 652.

Robbins v. *Taxing District*, 120 U. S., 489, 496; 30 L. Ed., 694, 697.

Leloup v. *Mobile*, 127 U. S., 640, 645; 32 L. Ed., 313.

As was stated by the Supreme Court of the United States in *Crutcher* v. *Kentucky*, *supra*, "a state law is unconstitutional and void which requires a party to take out a license for carrying on interstate commerce, no matter how specious the pretext may be for imposing it."

CONCLUSION

Six errors have been assigned by appellant, Interstate Transit, Inc., in this Honorable Court, which errors are substantially the same, except that the proposition of law involved in the case is stated in different forms. Hence, the preceding brief and argument does not present same seriatim.

It is earnestly insisted by appellant, Interstate Transit, Inc., that the decree and judgment of the Supreme Court of Tennessee, sustaining the validity of Chapter 89 of the 1927 Acts of Tennessee, is erroneous, and that said Act is repugnant to the Commerce Clause of the Federal Constitution.

We, therefore, ask that the decree of said Supreme Court of Tennessee be reversed and judgment entered here for the Interstate Transit, Inc., so as to correct such error.

Dated this 23rd day of February, 1931.

Respectfully submitted,

THOS. L. TALLENTIRE,
J. CARLTON LOSER,
H. LYNNE BARBER,
J. G. LACKEY,
Counsel for Appellant, Interstate Transit, Inc.

APPENDIX

Statutes of Tennessee referred to in foregoing brief are set out below:

CHAPTER NO. 89
REVENUE BILL
SENATE BILL NO. 589

(By Sub-Committee of Finance, Ways and Means Committee of both Houses.)

AN ACT entitled "An Act to provide for General Revenue for the State of Tennessee and the Counties and municipalities thereof, to be known as the General Revenue Bill."

SECTION 1. *Be it enacted by the General Assembly of Tennessee*, That the taxes on every One Hundred ($100.00) Dollars' worth of property shall be twenty (20) cents for the year 1927, and every year thereafter; seven (7) cents of which shall be for State purposes, five (5) cents for the University of Tennessee, and eight (8) cents for Elementary and Rural Schools. There shall be levied and collected a direct and collateral inheritance or transfer tax, as now, or may be hereafter provided by law, and nothing in this Act shall be construed to amend or repeal any of the provisions of said law.

SECTION 2. *Be it further enacted*, That the several County Courts of this State be, and they are, hereby authorized and empowered to levy an annual County Tax on every One Hundred ($100.00) Dollars of taxable property, not exceeding twenty (20) cents upon the One Hundred ($100.00) Dollars' worth of property, and exclusive of the tax for public roads and pikes and schools, and interest on county debts, and other special purposes, and each county and municipality in this State is hereby authorized and empowered to levy a privilege tax upon merchants and other such vocations, occupations or business as are named in this Act and declared to be privileges, not exceeding in amount that levied by the State for State purposes, and except as hereinafter provided. The imposition of a privilege tax under this Act shall not be construed as a release or exemption from an ad valorem tax, nor shall this Act be construed as repealing any special Act heretofore passed, imposing a privilege tax; provided, that any indigent ex-Confederate or ex-Federal soldier of the war of 1860-64, or the Spanish-American War, or any indigent soldier of the World War doing a privilege business, with a capital not exceeding Five Hundred ($500.00) Dollars, he being the sole beneficiary of said business, shall be exempt from paying the privilege tax herein provided for.

SECTION 3. *Be it further enacted*, That all merchants shall pay an ad valorem tax upon the cap-

ital invested by them in their business, in the same manner as all other property is assessed for ad valorem taxation; but the value of such capital shall be arrived at as provided in Section 26, and subsections thereof, of Chapter 602 of the Public Acts of 1907, known as the "Assessment Act"; and in addition thereto shall pay a privilege tax as hereinafter provided.

SECTION 4. *Be it further enacted,* That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privilege shall be as hereinafter fixed, which tax shall be paid to the County Court Clerk, as provided for the collection of such revenue.

* * * *

AUTOMOBILE BUSSES OPERATING UPON THE HIGHWAYS OF THIS STATE AND RUNNING INTO OTHER STATES, NOT LIABLE UNDER THE FOREGOING PROVISIONS.

(State Privilege Tax only.)

Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a

privilege tax under the foregoing provisions, shall pay as follows:

Each bus carrying 5 passengers or less, per annum	$ 50.00
Each bus carrying over 5 passengers and not more than ten passengers, per annum	100.00
Each bus carrying over 10 passengers and less than 15 passengers, per annum	200.00
Each bus carrying 15 passengers and less than 20 passengers, per annum	350.00
Each bus carrying over 20 passengers and less than 30 passengers, per annum	500.00
Each bus carrying over 30 passengers, per annum	750.00

Provided, that this tax shall be in lieu of all county and municipal taxes; Provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State.

* * * * *

SECTION 12. *Be it further enacted*, That any and all parties, firms or corporations exercising any of the foregoing privileges must pay the tax as set forth in this Act for the exercising of said privileges, whether they make a business of it or not, unless otherwise provided; and this Act shall not be so construed as to exempt any person, firm, or corpora-

tion whatever exercising any of the foregoing privileges, from the payment of the tax herein prescribed for the exercise of said privilege except as herein provided, and except as provided in Chapter 121, of the Acts of 1869 and 1870, except State and County fairs and their tenants.

That it shall be unlawful for any person, firm or corporation to exercise any of the foregoing privileges before complying with the provisions of this Act; and any one exercising any of the foregoing privileges without paying the tax prescribed shall be guilty of a misdemeanor, and liable to a fine of not less than $5.00 nor more than $50.00 per day for each day such privilege is exercised without license; provided. nothing herein shall be deemed to prohibit or interfere with interstate commerce.

* * * * *

SECTION 17. *Be it further enacted,* That it shall be the duty of each judge of the courts of the State having a criminal jurisdiction to especially give in charge to and have a grand jury of his court especially investigate all the offenses defined in this Act, and inquisitorial powers are hereby given to grand juries in the premises. It shall be the duty of the respective district attorneys of the State, upon the information or at the request of any reputable citizen of the State to investigate and prosecute *ex officio* all the offenses defined in this Act.

SECTION 19. *Be it further enacted*, That nothing in this Act shall be construed as licensing any character of business that is or may hereafter become unlawful.

And if any part, section, provision or clause of this Act shall be unconstitutional, it shall not affect the validity of any other part or provision hereof.

SECTION 20. *Be it further enacted*, That it shall be the duty of each and every official or agent charged with the collection, reporting and paying over State and County taxes, or other special revenues and privilege licenses, including fees, fines, forfeitures, costs, interest, and/or penalties, as now or may be hereafter prescribed by the laws of this State, to keep a complete record of such collections on books and forms prescribed for and approved by the Commissioner of Finance and Taxation; that they shall report said collections, if it be State revenue, to the State Comptroller, and if it be county revenue to the County Judge, or Chairman of the County Court, on forms prescribed and approved by the Commissioner of Finance and Taxation, as is now or shall hereafter be prescribed by the laws of this State.

SECTION 21. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed, and this Act shall

take effect from and after May 1, 1927, the public welfare requiring it.

(SIGNED) HENRY H. HORTON,
Speaker of the Senate.

(Signed) SELDEN MAIDEN,
Speaker of the House of Representatives.

Approved May 3, 1927.

(Signed) AUSTIN PEAY, *Governor.*

CHAPTER 58

PUBLIC ACTS 1929

SENATE BILL NO. 90

(By Bratton, Grubb, Candler and Bean.)

AN ACT to provide for the regulation, supervision and control of persons, firms, corporations and associations, owning, controlling, operating or managing motor vehicles used for transporting persons or property for compensation on the public highways of this State; to provide for inspection, control and supervision fees; and to provide appropriate penalties and punishment.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That no person, firm, corporation, association, their lessees, trustees, or receivers, except when such requirement would be

contrary to the Constitution or the laws of the United States or the Constitution of this State, shall operate any motor propelled vehicle (not usually operated on or over a rail or rails) for the transportation of persons or property for compensation on any public highway in any town, city or county in this State, without having first obtained from the Railroad and Public Utilities Commission of the State of Tennessee a certificate declaring that the public convenience and necessity warrant such operation; and all such operation—to the full extent allowed by the Constitution and laws of the United States and the Constitution of this State—shall be subject to control, supervision, and regulation by the said Commission; provided, however, that nothing in this Act contained shall apply to motor vehicles while used exclusively for transporting persons to or from schools, Sunday schools, churches, religious services, of any kind, upon special pre-arranged excursions under the auspices of any religious or charitable organization, or funerals, or while used exclusively for carrying persons and/or their baggage between railroad depots and any points in any city, town, or suburbs thereof, in or adjacent to which such depot is located, or while used exclusively in ordinary taxicab or city transfer service. By "ordinary taxicab or city transfer service," as used in the above proviso and exception, is meant service performed by way of transporting any persons or property for hire between points

in any one city, town, or the suburbs thereof, and which is not performed over or along any definite, fixed, announced or advertised routes between any points in any such one city, town, or the suburbs thereof; but motor vehicles for which passengers are solicited and which are operated to and from points of interest or historic points in or near any city, and which, therefore, perform the same service as a sight-seeing bus, are not excepted from the provisions of this Act, and the provisions of this Act shall apply to such motor vehicles thus operated, whether the same be called busses or for-hire cars or called by any other name.

Provided, further, that nothing in this Act shall prohibit a motor vehicle from making casual trips on call or under contract solicited by the party served, for the purpose of carrying passengers, provided that on said casual trips no one shall be allowed to pick up any passenger along the route, nor be permitted on the return trip to carry any passenger other than those included in the original trip; nor shall this Act or any provisions hereof affect or apply to persons, firms or corporations operating trucks or other motor vehicles for the sole purpose of transporting or delivering milk or milk products from the producer for delivery to the purchaser from the producer, nor shall this Act or any provisions hereof affect or apply to persons not engaged in the business of transporting property or freight for compensation who may be called upon as private car-

riers to haul or transport freight or property when the regular carriers holding certificates of convenience and necessity cannot or will not furnish adequate means of transporting the same.

Nothing in this act shall apply to any motor vehicle used to convey perishable farm products, or live stock, to market, the owner of which vehicle holds no certificate of public necessity and convenience, and only operates such vehicle in cases of emergency. Provided, this Act shall not apply to carriers of either freight or passengers who make occasional trips.

SECTION 3. *Be it further enacted,* That such certificate of public convenience and necessity, when once issued, may be assigned or transferred, but no such certificate shall be so assigned or transferred, without the approval of said Commission.

Provided, that when any motor carrier holding a certificate of convenience and necessity sells his entire property and business for the purpose of having his operations continued by the purchaser, and the Commission approves the transfer of the seller's certificate of convenience and necessity, then there shall be paid to the State of Tennessee twenty-five (25) per cent of the purchase price over and above the value of the physical properties and going value sold—the value of the physical properties and going value sold to be fixed by appraisal to be made by the Commission.

No motor vehicle shall be operated upon any such public highway in this State for the purpose of transporting passengers or property for hire by virtue of such certificate until there shall have been filed with the Commission a bond, indemnity undertaking, or policy of insurance executed by a company, mutual association or reciprocal exchange legally authorized to execute such instruments in the State of Tennessee and approved by said Commission, in such reasonable amount and under such terms and conditions as said Commission may prescribe; and such bond, indemnity undertaking or policy of insurance shall be conditioned to pay any judgment rendered against such certificate holder and/or operator (within the limits of said bond, policy or undertaking) as the result of damage from personal injury or damage to property arising out of the actual operation of such vehicles, or for damage to or loss of prperty while in the possession of or under the control of any such operator in this State; and for failure upon the part of the operator and/or certificate holder continuously to maintain such bond, policy or undertaking in force, shall subject such certificate to revocation.

* * * * *

SECTION 7. *Be it further enacted*, That on or before the 31st day of December of each year, each and every operator of any motor-propelled vehicle or vehicles, subject to the control and jurisdiction of said Railroad and Public Utilities Commission of the State of Tennessee, shall pay to the State of Ten-

nessee, at such times and in such installments as said Commission may require, a fee for the inspection, control and supervision of the business, service or acts of such operator, and such fee shall be paid by each such operator in addition to any and all property, franchise, license and other taxes, fees and charges now or hereafter fixed, assessed or charged by law against such operators. The amount of such fee so to be paid by each operator shall be the sum of Two Dollars ($2.50) and Fifty Cents per annum, per passenger seat provided for passengers in each such vehicle, and the sum of Ten ($10.00) Dollars per annum per ton of carrying capacity provided for property in each vehicle. Said Commission, under Rules promulgated or orders made by it, may require the payment in advance of the above fee from each such operator, or may require bond and security, satisfactory to said Commission, to secure such payment, if same be not required to be made in advance; and said Commission, under rules promulgated or orders made by it, shall have power to apportion the payment of such fee by any operator or operators for any poportionate part or parts of any year while such operation continues. In no case shall said fee to be paid by any such operator be less than Ten ($10.00) Dollars, which shall be the minimum inspection, control and supervision fee to be paid by any operator subject to such fee for any year, or part thereof. It shall be the duty of the Comptroller to collect said fees from said operators, as required by the rules and orders of said Commission, and to

keep a separate account of the fees so collected, to be known as the "Motor Vehicle Account," the funds so raised to be segregated. Any funds remaining in said Motor Vehicle Account at the end of the year shall be carried over from year to year and expended only for the purposes specified in this Act. In case of default in the payment of any such fee, or part thereof, when same shall become due, any such operator in default shall be liable to a penalty of ten (10) per cent per month, on the amount of the fee, which may be recovered by suit of the State, for every month it remains in default; and any such penalty, as well as all such fees, when collected, shall be covered into the State Treasury as a part of said Motor Vehicle Account, provided that out of any such penalty the Comptroller may employ and pay counsel, who shall have power to institute suit in any court of competent jurisdiction in this State for the recovery of any such delinquent fee and penalty, but, in no event, shall anything more than the penalty be allowed to such counsel for making such collections. A lien is hereby declared, and shall exist, upon all the property of each such operator coming within the provisions of this Act, for the payment of the fees prescribed by this Act, together with all penalties accruing hereunder, which lien shall be superior to all other liens, except, for Federal, State, county and municipal taxes. The inspection, control and supervision fee provided to be paid by this Act shall be the only fee and charge to be paid by and collected from such operators to cover the ex-

pense of inspection, control and supervision. Said Railroad and Public Utilities Commission of the State of Tennessee is hereby empowered to employ such rate experts, attorneys, accountants, inspectors, examiners, clerks, agents or other employes, and assign to them such duties as it may deem necessary to enable it fully to perform the duties, and to exercise the powers conferred by this Act upon said Commission. The compensation of any person employed under the authority of this Act shall be paid by the Commission, and paid from the fund in the "Motor Vehicle Account," but not otherwise, and said Commission shall not have the power to contract for any services, in connection with the administration of this Act, for which payment shall be made in any other way, or manner, by the State, or derived from any other source than the "Motor Vehicle Account," herein provided for. Any person or persons employed by said Commission under the authority herein given, may be assigned by said Commission, to investigate, hear, and where possible, adjust, any individual or general complaint made by any person against such operator, wherein the investment, property, service or charges of any operator or claims preferred against any operator may be involved; and may hear and take proof, and in the event he is unable to effect a satisfactory adjustment of any such complaint, then it shall be his duty to certify the same to said Commission, with his recommendations in the premises, whereupon said Commission shall, after hearing, make its final

order, which shall be binding upon the parties to any such controversy.

* * * * *

SECTION 10. *Be it further enacted,* That every officer, agent or employee of any corporation, or any other person, who willfully and deliberately violates or fails to comply with, or who procures, aids or abets in the violation of the provisions of this Act, shall be guilty of a misdemeanor, and upon conviction thereof for the first offense shall be punished by a fine of $50.00; for the second offense shall be punished by a fine of $100.00; for the third offense shall be punished by a fine of $500.00 or by imprisonment for a period not exceeding one year, or both; said fine and imprisonment at the discretion of the court. Each day any provision of this Act is violated shall constitute a separate offense.

SECTION 11. *Be it further enacted,* That every officer, agent or employee of any corporation and every other person who fails to obey, observe or comply with any order, decision, rule, regulation, direction, demand, or requirement of said Railroad and Public Utilities Commission of the State of Tennessee made in pursuance of the power and authority conferred by this Act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding Five Hundred ($500.00) Dollars, or by imprisonment for not exceeding one year, or by both fine and imprisonment. Each day

any such order, decision, rule, or regulation, etc., of said Commission is violated shall constitute a separate offense; and the fact that there may have been a prosecution for the violation of any such order, decision, rule, or regulation, etc., of said Commission under this section shall not operate to prevent or limit the exercise of the authority of the Commission to suspend, revoke, alter or amend certificates as provided in this Act.

SECTION 15. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

CHAPTER NO. 58
HOUSE BILL NO. 525
(By Mr. Hall.)

AN ACT requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the business in this State of selling gasoline and distillate in this State, to pay to the State Comptroller a privilege tax, for engaging in and carrying on such business in this State, equal to *five cents per gallon of such gasoline and distillate, to be in addition to all other taxes, such fund to be used in the construction and maintenance of a highway system in the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That as used in this Act, the term "person" means and includes every individual, firm, association, joint stock company, syndicate and corporation.

The term "distributor" means and includes every person who engages in the business in the State of refining, manufacturing, producing or compounding gasoline or distillate, and selling the same in this business in this State of shipping, transportng or importing any gasoline or distillate into, and making original sales of the same, in this State.

The term "dealer" means and includes every person, other than a distributor, who engages in the

business in this State, of distributing or selling gasoline or distillate within this State.

SECTION 2. *Be it further enacted*, That every distributor shall, for the year 1923, and each year thereafter, when engaged in such business in this State, pay to the State Comptroller, for the exclusive use of the State, a special privilege tax, in addition to all other taxes, for engaging in and carrying on such business in this State, in an amount equal to *five cents for each gallon of gasoline, and five cents for each gallon of distillate refined, manufactured, produced, or compounded by such distributor into, and distributed or sold by him within this State, during such year; provided, however, that no gasoline or distillate distributed or sold by any such distributor in the original packages in which the same was shipped, transported or imported into this State, shall be included or considered in determining the amount of such privilege tax, but only such gasoline and distillate as has been sold or distributed by such distributor, after the breaking of the original packages in which the same was shipped, transported or imported into this State shall be included or considered in computing the amount of the privilege tax to be paid by such distributor; provided, further, that all gasoline and distillate distributed by any distributor to any of its service stations in this State shall be deemed to have been sold, and shall be treated in the same manner as

though the same had been sold to dealers or other persons.

SECTION 3. *Be it further enacted*, That every dealer shall for the year 1923, and each year thereafter, when engaged in such business in this State, pay to the State Comptroller, for the exclusive use of the State, a special privilege tax, in addition to all other taxes, for engaging in such business in this State, equal to five cents for each gallon of gasoline and five cents for each gallon of distillate sold or distributed by such dealer in this State during such year. Provided, however, that no gasoline or distillate sold or distributed by such dealer, and which was refined, manufactured, produced or compounded and sold by a distributor in this State, and no gasoline or distillate sold by such dealer which, when purchased by him, other than was contained in containers or packages in which the same was shipped, transported or imported into this State, shall be included or considered in determining the amount of such privilege tax to be paid by such dealer, but only such gasoline and distillate as was shipped, transported or imported into this State, and purchased by such dealer in the original packages in which so shipped, transported or imported into this State, and then resold by such dealer after the breaking of such original packages by him, shall be included or considered for the purpose of computing the amount of such privilege tax.

SECTION 12. *Be it further enacted*, That it shall be the duty of the State Comptroller to collect all taxes accruing under this Act and to issue proper receipts therefor and to pay over all taxes so collected to the State Treasurer, who shall place them to the credit of a fund to be used solely in the construction and maintenance of the Highway System of the State, and no part of said fund shall be used in any other department or for any other purpose whatsoever.

SECTION 13. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed; and that this Act take effect on April 1, 1923, the public welfare requiring it.

Passed March 14, 1923.

F. S. HALL,
Speaker of the House of Representatives.

EUGENE J. BRYAN,
Speaker of the Senate.

Approved March 14, 1923.

AUSTIN PEAY,
Governor.

(Pages 150-156 Public Acts of Tennessee for 1923.)

---

*The above quoted Act of the General Assembly of Tennessee originally levied a tax of two cents per gallon on gasoline, but subsequent amendments to said Act have increased said tax until it is now five cents per gallon.

CHAPTER NO. 73

HOUSE BILL NO. 1033

(By Messrs. Bond, Davis of Wilson, Ashley, Bratton.)

AN ACT to amend Chapter No. 8 of the Public Acts of 1915, entitled "An Act to be entitled an Act to require the registration of automobiles, motorcycles and other motor propelled vehicles; to require an annual registration of all such vehicles, to provide for a payment of a fee for all such registration and to provide a penalty for violation of this Act;" to provide for the payment of certain fees to the County Court Clerk of the various counties; and to empower certain county and state officials with the enforcement and administration of this Act and of the funds collected by the provisions of this Act.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Chapter 8 of the Acts of 1915, passed January 29, 1915, entitled, "An Act to be entitled an Act to require registration of automobiles, motorcycles and other motor propelled vehicles; to require the registration of all such vehicles; to provide for a payment of a fee for all such registration and to provide a penalty for violation of this Act," be amended so as to read as follows:

* * * * *

SECTION 4. *Be it further enacted*, That the owner of such vehicle is hereby required to display, in a conspicuous manner, at both front and rear of such vehicle, a number plate of size, color, dimension and character as the State Department of Highways may designate, provided, that the size of the number plate shall be the same each year. The number plate shall show, in addition to the registration number of such machine, the year and the abbreviation of Tennessee. Provided, further, that the State Department of Highways through the County Court Clerk shall furnish, without additional cost to the owner of such machine, a set of two number plates, and owners are required to use these number plates on their machines, and no other number plates shall be used.

* * * * *

SECTION 6. *Be it further enacted*, That each owner of a motor vehicle, motorcycle, auto truck or like vehicle shall annually hereafter, on or before the first day of January of each year, make application to the State Department of Highways through the County Court Clerk for annual registration, giving the same information and paying the same fees as required in an original registration including re-registration with the County Court Clerk, and upon payment of such fees shall receive from the State Department of Highways, through the County Court Clerk a certificate showing such registration, and shall also receive from the State Department of

Highways through the County Court Clerk a set of two number plates on which shall, in addition to the registration number, have the year and the abbreviation of Tennessee.

* * * * *

SECTION 7. *Be it further enacted,* That it shall be the duty of the County Court Clerk of each county to collect the fees herein provided and to enforce the provisions of this Act; it shall be his duty to ascertain the names of the owners of all automobiles, motor trucks, motorcycles and vehicles of like character in his county and to issue distress warrants against any such owner who is operating such vehicle in violation of the provisions of this Act after March first of any year, in which case the usual distress warrant fees shall obtain; he shall take registration applications from the owners of all such vehicles specified in this Act; shall collect the fees provided in this Act; shall distribute the number plates provided by the State Department of Highways; shall keep a complete record in his office for the benefit of the general public of all such vehicles registered in his county; shall deposit daily in some State depository in his county designated by the State Treasurer all highway or road funds collected under this Act for the State, said funds to be deposited to the credit of the State Treasurer for the State Highway Fund; shall make a report not later than the fifth of each month to the

State Treasurer or Comptroller showing the amount of such deposits, and shall make a report not later than the fifth of each month to the State Department of Highways showing number in numerical order of each number plate issued during the preceding month and give the name and address of the person to whom issued and the amount collected, and shall account to the State Department of Highways for all number plates consigned to him; he shall collect from the owner making application for registration of a vehicle a fee of twenty-five cents, which shall be his compensation in full; and it shall be the duty of the State Treasurer to designate to the County Court Clerk in each county a State depository in such county in which the funds collected under this Act shall be deposited; he shall keep an accurate and separate account of such funds and shall on the first day of March, June, September and December, or as much oftener as may be required by the State Department of Highways, withdraw from each of such banks ten per cent of the funds deposited since the last withdrawal, which fund shall be placed in the State Treasury to the credit of the State Department and for the payment of all the costs to the department for the collection of such fund, which shall include cost of number plates, printing certificates and other printing pertaining to collection of such fund, postage, clerical help, and such other expense as may be incurred

by the department in the collection of this fund, which ten per cent shall constitute the sole amount that may be withdrawn from this fund. The remainder of the fund shall be expended in the county from which collected, under the direction and supervision of the State Highway Department in co-operation with the regular legally constituted road authorities of the county in the maintenance of State highways, and the State Highway Department and the legally constituted road authorities of all counties shall co-operate with each other in the expenditure of this fund as provided in Chapter 100 of the Public Acts of Tennessee, 1915; provided that said fund shall be deposited as the State and county highway fund and shall be drawn out only on vouchers signed by the Chairman of the State Highway Department and the Secretary for road work in the county where collected as herein provided; provided, further, that the County Courts of counties shall direct the expenditure of all of this fund when the State Department fails to do so by May 1st of each year, and the State Highway Commission shall in that case pay to each county its share as said county expends it as directed by the legally constituted road authorities of the county.

* * * * *

SECTION 11. *Be it further enacted*, That all laws in conflict with this Act be, and the same are, hereby repealed, and that this Act take effect on the

twenty-third day of April, 1917, the public welfare requiring it.

Passed April 5, 1917.

CLYDE SHROPSHIRE,
Speaker of the House of Representatives.

W. H. CRABTREE,
Speaker of the Senate.

Approved April 7, 1917.

TOM C. RYE,
Governor.

FILE COPY

(35280)

Office Supreme Court, U. S.
FILED
MAR 16 1931
CHARLES ELMORE CROPLEY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 358.

INTERSTATE TRANSIT, Incorporated,
Appellant,

vs.

DICK LINDSEY, County Court Clerk,
Apellee.

BRIEF OF APPELLEE

L. D. SMITH, Attorney General of Tennessee
ROY H. BEELER, Solicitor General of Tennessee
Counsel for Appellee

McQUIDDY PRINTING CO., NASHVILLE

SUBJECT INDEX.

	PAGE
Statement of the Case	1-4
Brief and Argument	4-24
Proposition No. 1: A State may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of construction and maintenance of the public highways.	4
Proposition No. 2: Since the highways of the State over which appellant operates are kept in a proper state of repair and are properly maintained by the State out of adequate funds made available for that purpose, the appellant cannot complain that the tax challenged is not directly levied and collected for the specific benefit of the Highway System of the State	14
Proposition No. 3: The exaction complained of and challenged by appellant is reasonable in amount and not incommensurate with the use to which the appellant puts the State Highways over which it operates	20
Proposition No. 4: That the tax complained of appears in what is denominated by the General Assembly of Tennessee as the "Revenue Bill" does not make it unlawful	21
Proposition No. 5: In the absence of Statutory Enactment by the Federal Government to regulate and tax interstate motor carriers operating for hire, each state may tax and regulate such operations	22
Proposition No. 6: There is no discrimination in the Tennessee statute complained of against interstate operators in favor of intrastate operators	23

TABLE OF CASES.

	PAGE
Buck v. Kuykendall, 267 U. S., 307, 69 L. Ed., 623	7
Clark v. Poor, 274 U. S., 557, 71 L. Ed., 1200	5
Gatlin v. Harrison, 155 Tenn., 560	7
Gundling v. Chicago, 177 U. S., 183	11
Hendrick v. Maryland, 235 U. S., 610, 59 L. Ed., 385	4
Hess v. Pawlowski, 274 U. S., 352, 47 Sup. Ct. Rep., 632	6
Interstate Busses Corporation v. Blodgett, 276 U. S., 245, 72 L. Ed., 551	4
Interstate Busses Corporation v. Holyoke St. R. Co., 273 U. S., 43, 71 L. Ed., 531	6
Interstate Transit Company v. Lindsey, 161 Tenn., 561, 29 S. W. (2d), 257 (Appendix D)	141
Johnson Transfer and Freight Line v. Perry (Appendix E)	19
Kane v. New Jersey, 242 U. S., 160, 61 L. Ed., 222	6
MacAllen Company v. Massachusetts, 279 U. S., 625, 73 L. Ed., 879	21
Morris v. Duby, 274 U. S., 135, 47 Sup. Ct. Rep., 548	5
Northern Kentucky Transportation Company v. Bellevue, 285 S. W., 241	9
Packard v. Banton, 264 U. S., 140, 68 L. Ed., 596	6
Red Ball Transit Company v. Marshall, 8 F. (2), 635	10
Sprout v. South Bend, 277 U. S., 170, 72 L. Ed., 837	4
Vandalia R. Company v. Public Service Commission, 242 U. S., 255, 61 L. Ed., 276	23

APPENDIX—STATUTES.

PAGE

Acts 1915, Ch. 8—Motor Vehicle Registration Law 3

Acts 1915, Ch. 100—Creating State Highway Commission 8

Acts 1917, Ch. 16—Authorizes Highway Department to accept Federal Aid 16

Acts 1917, Ch. 58—Authorizes Treasurer to receive funds from the Federal Government.... 18

Acts 1917, Ch. 73—Increases motor vehicle registration fees 19

Acts 1917, Ch. 74—Reorganizes Highway Department 28

Acts 1919, Ch. 149—Reorganizes Highway Department 40

Acts 1923, Ch. 58—Provides two cents gasoline tax 58

Acts 1925, Ch. 4—Increases gasoline tax to three cents 66

Acts 1925, Ch. 72—Authorizes the State to borrow $5,000,000 highway funds 68

Acts 1927, Ch. 1—Authorizes the State to borrow $5,000,000 to construct toll bridges 70

Acts 1927, Ch. 6—Authorizes the State to borrow $4,500,000 to construct toll bridges..... 78

Acts 1927, Ch. 37—Authorizes the State to borrow $2,000,000 to construct toll bridges..... 85

Acts 1927, Ch. 83—Authorizes the State to borrow $10,000,000 to construct highways 92

Acts 1929, Ch. 5—Authorizes the State to borrow $600,000 to construct toll bridges 94

Acts 1929, Ch. 11—Increases gasoline tax to five cents 101

PAGE

Acts 1929, Ch. 36—Authorizes the State to borrow $25,000,000 for highways 103

Acts 1929, Ch. 104—Authorizes the State to borrow $500,000 for toll bridges 105

Acts 1929, Ch. 112—Authorizes the State to borrow $250,000 for toll bridges 111

Acts 1929, Ch. 4—Extra Session, Authorizes $10,000,000 for highways 117

Acts 1927, Ch. 89—Revenue Act in question.... 121

Acts 1929, Ch. 58—Motor Vehicle Regulatory Act 127

(35280)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1930.

No. 358.

INTERSTATE TRANSIT, Incorporated,
Appellant,

vs.

DICK LINDSEY, County Court Clerk,
Apellee.

REPLY BRIEF OF APPELLEE

May It Please the Court:

STATEMENT OF THE CASE.

The appellant, Interstate Transit, Inc., an Ohio corporation engaged in the operation of motor busses carrying passengers for hire between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, Nashville, Tennessee, and Chattanooga, Tennessee, instituted this suit in the Chancery Court at Nashville, Tennessee, to recover $1,012.00 paid by appellant to appellee, Dick Lindsey, County Court Clerk of David-

son County, as a privilege tax or exaction by the State on eight twenty-nine-passenger busses operated by appellant in the carriage of passengers over said route. The recovery sought by appellant represents payment by it for one-quarter of a year on the eight busses.

Appellant predicates its alleged right to recover said sum upon the theory that it is engaged solely in interstate commerce, and that, being thus engaged, the provisions of Chapter 89, Public Acts of Tennessee for 1927, at page 291 of the published Acts under which this exaction was paid for the quarter, are violative of the commerce clause of the Federal Constitution, Article 1, Section 8, Clause 3, which provides:

> "The Congress shall have power . . . to regulate commerce with foreign nations, and among the several states, and among the Indian tribes."

The Tennessee Act levying the tax challenged by the appellant in this case, appearing on page 291 of the published volume of the Acts of 1927 is as follows:

> "AUTOMOBILE BUSSES OPERATING UPON THE HIGHWAYS OF THIS STATE AND RUNNING INTO OTHER STATES, NOT LIABLE UNDER THE FOREGOING PROVISIONS. (State Privilege Tax only.)
>
> "Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:
>
> "Each bus carrying 5 passengers or less, per annum ..... $ 50.00
>
> "Each bus carrying over 5 passengers

and not more than 10 passengers, per annum ---------- $100.00

"Each bus carrying over 10 passengers and less than 15 passengers, per annum 200.00

"Each bus carrying 15 passengers and less than 20 passengers, per annum .. 350.00

"Each bus carrying over 20 passengers and less than 30 passengers, per annum 500.00

"Each bus carrying over 30 passengers, per annum 750.00

"Provided, that this tax shall be in lieu of all county and municipal taxes; Provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State." (R., pp. 1-8.)

This case was tried on bill and answer with the facts stipulated in the Chancery Court of Davidson County, Tennessee, and the Chancellor held that the bill was maintainable and that the appellant was not liable for the tax under the Act last above quoted and that the appellant was entitled to recover the same. (R., pp. 14-16.)

The appellee, Dick Lindsey, excepted to the action of the Chancellor, prayed and was granted an appeal to the Supreme Court of Tennessee. (R., p. 16.)

The decree of the Chancellor was reversed in an opinion for publication by Mr. Justice Chambliss of the Supreme Court of Tennessee, that Court holding that the appellant was not entitled to recover the exaction theretofore paid to the State of Tennessee, but that the State was entitled to make the exaction of the appellant as its fair contribution to the cost incurred by the State in the construction and maintenance of the public highways. (R., pp. 20-26.)

161 Tenn., 56, 29 S. W. (2nd), 257.

Appellant filed a petition with the Supreme Court of Tennessee for appeal to this Honorable Court on August 2, 1930, and the appeal was granted by the Chief Justice of the Supreme Court of Tennessee. (R., pp. 27-36.)

While the appellant has assigned six errors, they are all predicated on the theory that the exaction imposed by the Tennessee Act on appellant's busses is void and unconstitutional in that it is violative of the commerce clause of the Federal Constitution. (Appellant's Brief, pp. 20-22.)

REPLY BRIEF AND ARGUMENT.

Proposition No. 1: A STATE MAY IMPOSE, EVEN ON MOTOR VEHICLES ENGAGED EXCLUSIVELY IN INTERSTATE COMMERCE, A REASONABLE CHARGE AS THEIR FAIR CONTRIBUTION TO THE COST OF CONSTRUCTION AND MAINTENANCE OF THE PUBLIC HIGHWAYS.

Sprout v. *South Bend*, 277 U. S., 170, 72 L. Ed., 837.

Hendrick v. *Maryland*, 235 U. S., 610, 622, 59 L. Ed., 385, 390.

Interstate Busses Corporation v. *Blodgett*, 276 U. S., 245, 72 L. Ed., 551.

Mr. Justice Brandeis in an able opinion in the case of *Sprout* v. *South Bend*, 277 U. S., 170, 72 L. Ed., 837, among other things held:

"It is true also that a state may impose, even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair con-

tribution to the cost of constructing and maintaining the public highways."

Accord:

Hendrick v. *Maryland*, 235 U. S., 610, 59 L. Ed., 385, 390.

In the case of *Clark* v. *Poor*, 274 U. S., 557, 71 L. Ed., 1200, Mr. Justice Brandeis ruled as follows:

"The plaintiffs claim that, as applied to them, the act violates the commerce clause of the Federal Constitution. They insist that, as they are engaged exclusively in interstate commerce, they are not subject to regulation by the state; that it is without power to require that before using its highways they apply for and obtain a certificate; and that it is also without power to impose, in addition to the annual license fee demanded of all persons using automobiles on the highways, a tax upon them, under Secs. 614-94, for the maintenance and repair of the highways and for the administration and enforcement of the laws governing the use of the same. The contrary is settled. The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. *Morris* v. *Duby*, No. 372, decided April 18, 1927 (274 U. S., 135, *Ante*, 966, 47 Sup. Ct. Rep., 548). Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire, who make the highways their place of business, may properly be charged an extra tax for such use. *Hen-*

drick v. *Maryland*, 235 U. S., 610, 59 L. Ed., 385, 35 Sup. Ct. Rep., 140; *Kane* v. *New Jersey*, 242 U. S., 160, 61 L. Ed., 222, 37 Sup. Ct. Rep., 30; *Hess* v. *Pawloski*, No. 263, decided May 16, 1927 (274 U. S., 352, *Ante*, 1091, 47 Sup. Ct. Rep., 632). Compare *Packard* v. *Banton*, 264 U. S., 140, 144, 68 L. Ed., 596, 607, 44 Sup. Ct. Rep., 257."

Again in this same opinion it is held:

> "It is said that all of the tax is not used for the maintenance and repair of the highways; that some of it is used for defraying the expenses of the commission in the administration or enforcement of the act; and some for other purposes. This, if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs."
> *Clark* v. *Poor*, *supra*.

Undoubtedly the state has power in the public interest to control and regulate the use of its highways so long as it does not directly burden or interfere with interstate commerce.

Hendrick v. *Maryland*, 235 U. S., 610, 59 L. Ed., 385.
Morris v. *Duby*, 274 U. S., 134, 71 L. Ed., 966.
Clark v. *Poor*, 274 U. S., 553, 71 L. Ed., 1199.
Interstate Busses Corp. v. *Holyoke St. R. Co.*, 273 U. S., 43, 71 L. Ed., 531.
Interstate Busses Corp. v. *Blodgett*, 276 U. S., 243, 72 L. Ed., 551.
Sprout v. *South Bend*, 277 U. S., 163, 72 L. Ed., 833.

Buck v. *Kuykendall*, 267 U. S., 307, 69 L. Ed., 623.

Our case of *Gatlin* v. *Harrison*, 155 Tenn., 560, reviews the foregoing authorities and sustains our contention.

It is well settled that a state which has furnished special facilities, such as public highways, for the use of those engaged in intrastate and interstate commerce may exact compensation therefor and if the charges are reasonable and uniform they constitute no burden on interstate commerce. The amount of the license fee or privilege tax imposed by a state statute for the use of its highways need not necessarily be limited even to those engaged in interstate traffic, to actual cost of regulation, but may include reasonable compensation for the use of the highways and repairs thereof.

There is no evidence in the record to the effect that the privilege exaction involved is unreasonable in amount or in excess of a fair contribution by appellant to the cost of maintaining the highways over which it operates—nor is there any claim of discrimination. The burden of proof is upon appellant on these, as well as all other questions.

Interstate Busses Corp. v. *Holyoke St. R. Co.*, *supra.*

In the case of *Hendrick* v. *Maryland*, *supra*, the Court, speaking through Mr. Justice McReynolds, said:

> "In view of the many decisions of this Court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method

of collection are primarily for determination by the state itself; and so long as they are reasonable and are fixed according to some uniform, fair and practicable standard, they constitute no burden on interstate commerce. (Citing authorities.)"

The Court in the course of the same opinion again said:

"The action of the state must be treated as correct until the contrary is made to appear."

In the case of *Clark* v. *Poor*, *supra*, the Court said:

"The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. (Citing authorities.) Users of them, although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire who make the highways their place of business may be properly charged an extra tax for such use. (Citing authorities.)"

Again:

"There is no suggestion that the tax discriminates against interstate commerce. Nor is it suggested that the tax is so large as to obstruct interstate commerce. It is said that all of the tax is not used for maintenance and repair of the highways; that some of it is used for defraying expenses of the commission in the administration and enforcement of the Act; and some for other purposes. *This, if true, is immaterial. Since the*

tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs." (Italics added.)

In *Interstate Busses Corporation* v. *Blodgett, supra*, it was said:

> "An interstate carrier using the public highways of the state cannot defeat the collection against it of a mileage tax for the use of the highways as violating the commerce clause of the Federal Constitution, merely because the tax on interstate carriers is based upon gross receipts, in the absence of anything to show that in actual practice the tax complained of falls with disproportionate weight upon it."

Again:

> "That one using the highways of a state in interstate commerce already contributing to highway maintenance does not prevent the imposition on it of a mileage tax for the use of the highways."

In the case of *Northern Kentucky Transportation Co.* v. *Bellevue* (1926)—— Kentucky ——, 285 S. W., 241, the Kentucky Court, in holding that a reasonable license fee did not constitute a burden on interstate commerce, said:

> "In the absence of legislation by Congress it has been uniformly held that a state . . . may prescribe uniform regulations for the use of its highways by motor vehicles, and charge a license fee graduated according to the horsepower of the engines, weight and seating capacity of the vehicle,

so long as such regulations and fees are reasonable, although they may incidentally affect interstate commerce. The right of a state or municipality to regulate the use of its highways and to impose a license fee for the use thereof is recognized by the courts on the ground that such regulation and licensing are proper exercises of its police power, and, further, that it has a right to exact reasonable compensation for the use of its highways."

In *Red Ball Transit Co.* v. *Marshall* (1925, D. C.), 8 F. (2d), 635, in discussing this question the Court said:

"While it has been settled beyond peradventure that a state which has furnished special facilities, such as public highways, for the use of those engaged in intrastate and interstate commerce, may exact compensation therefor, and if the charges are reasonable and uniform, they constitute no burden on interstate commerce, yet; on the other hand, the burden so imposed must of necessity be reasonable. The amount of the license fee or privilege tax imposed by a state statute for the use of its highways need not necessarily be limited, even to those engaged in interstate traffic, to the actual cost of regulation, but may include reasonable compensation for the use of the highways and repairs thereof.

"The coming of this new method of transportation, involving the use of heavy and high powered busses running at great speed, introduces new and peculiar elements affecting the maintenance of the highways and the protection of the public which annually call for regulations of a character quite distinct to those applicable to private conveyances.

> The dangers to the traveling public arising from the operation of these very long and heavy busses, as well as their destructive effect on our highways, peculiarly requires and makes mandatory a call on their operators for a reasonable contribution to the state for the cost of building and maintaining state highways. And whether this exaction is allocated strictly to the police or taxing power of the state, or to both, is unimportant in our judgment, so long as the contribution is fair and applies to intra and interstate operators equally."

The Supreme Court of the United States, in the case of *Gundling* v. *Chicago*, 177 U. S., 183, in which the validity of an ordinance of the City of Chicago was under challenge, Mr. Justice Peckham, in upholding the ordinance, said:

> "It is not a valid objection to the ordinance that it partakes of the character of the regulation and also that of an excise or privilege tax. The business is more easily subjected to the operation of the power to regulate where a license is imposed for following the same, while the revenue obtained on account of the license is none the less legal because the ordinance which authorized it fulfills the two functions, one a regulating and the other a revenue function. So long as the state law authorizes both regulation and taxation, it is enough, and the enforcement of the ordinance violates no provisions of the Federal Constitution."

Mr. Chief Justice Taft, speaking for the Supreme Court in *Morris* v. *Duby*, 274 U. S., 135, held that in the absence of national legislation covering the subject of interstate commerce, the state may rightfully prescribe uniform regulations adapted to promote safety on the

highways and the conservation of their use, applicable alike to vehicles moving in interstate commerce and those of its own citizens.

There is a noticeable tendency in our courts, both state and federal, in dealing with questions of commerce to distinguish commerce on the highways from other classes of cases involving an application of the interstate commerce clause. The distinction should be made for the following reasons, to wit:

The State owns the highways and builds and maintains them at great expense. The State, therefore, furnishes the facilities which are occupied by bus operators in conducting and carrying on their privately owned and controlled business for profit.

A bus operator, such as the appellant, has no locally owned property in the State such as that owned by railroads, steamboats, telegraph and telephone companies, and other carriers. The railroads and other carriers mentioned must acquire and own rights-of-way, stations, and other local property necessary for the conduct of its business, whereas, the appellant is not in the conduct of its business compelled to own, and as a matter of fact does not appear to own, any property, in the State whatever, not even a station or depot, at which it receives and discharges passengers.

Again we deem it a matter worthy of consideration that the bill on its face shows that this appellant has in service very heavy and dangerous instrumentalities —the bill shows the passenger capacities of the busses, however, their weights are not stated, but we know as a matter of common knowledge that these through busses are enormously large and heavy and that they are driven at a high rate of speed over our highways, and seriously interfere with the local use of our highways by our own citizens, and we also know that these heavy busses are destructive to our bridges, our culverts, and

to the highways generally, over which they operate—so we contend in reason that there should be a distinction between commerce of the kind being conducted by this complainant and the commerce carried on by the ordinary common carriers, such as we have heretofore been accustomed to.

If we are wrong in our contention and if this appellant can escape this privilege tax upon any such idea as that it is engaged in interstate commerce, then the appellant enjoys a distinct privilege over our own citizens. Our own citizens operating busses in Tennessee are required to pay this privilege tax and on the same classifications as that applied to this appellant and other operators engaged strictly in interstate business. Yet, under the construction claimed by our learned adversary, this appellant may operate as many busses as it pleases across and through all of the counties of Tennessee and yet be exempt from the payment of any tax. We submit that any law, state or federal, evolving a situation of this kind is too manifestly unjust to challenge any sympathetic consideration.

The privilege fee imposed in this case is non-discriminatory against appellant—the very same privilege fee is imposed against those operating busses in intrastate business—in other words, under the law the interstate and intrastate operators each pay the same license fee, which in both cases is a charge collected as a contribution to the cost and maintenance of the highways. These operators are occupying and using the highways which cost the state large sums of money to build and maintain, and it is but fair that such usage by these operators for private profit should be required to make some contribution to the state for the facilities furnished by the state, and but for which the busses could not be profitably operated. This appellant, while crossing the

state, not only occupies the highways as its place of business for profit, thus getting the benefit of the facilities furnished by the State, but in addition thereto receives the protection of our laws while within the borders of the State.

Proposition No. 2: SINCE THE HIGHWAYS OF THE STATE OVER WHICH APPELLANT OPERATES ARE KEPT IN A PROPER STATE OF REPAIR AND ARE PROPERLY MAINTAINED BY THE STATE OUT OF ADEQUATE FUNDS MADE AVAILABLE FOR THAT PURPOSE, THE APPELLANT CANNOT COMPLAIN THAT THE TAX CHALLENGED IS NOT DIRECTLY LEVIED AND COLLECTED FOR THE SPECIFIC BENEFIT OF THE HIGHWAY SYSTEM OF THE STATE.

In order to properly present this proposition, we deem it necessary to briefly refer to and give a short resume of the Acts creating a State Highway Department and providing revenue therefor, all of which Acts are printed in Appendix A hereto.

Acts 1915, *Chapter* 8, Appendix A—1, page 3, requires registration of all motor vehicles and fixes fees therefor, which are covered by a later Act into the highway fund.

Acts 1915, *Chapter* 100, Appendix A—2, page 8, creates the first State Highway Commission, and at Section 12 provides that funds arising from annual registration and licensing of motor vehicles shall be available for use as highway funds and shall be expended under the Department of Highways for the maintenance of the public highways of the State; and at Section 14 authorizes the Highway Commission to make any and all necessary and proper contracts to receive aid from the Federal Government in the construction, repair and maintenance of the highways of the State.

Acts 1917, *Chapter* 16, Appendix A—3, page 16, authorizes the State Highway Department to assent to the provisions of the Act of Congress (39 U. S. Stat. at L., p. 355), relating to the construction of rural post roads and the reception of Federal aid therefor; and Section 2 of said Act provides:

> "That the good faith of the State is hereby pledged to make available funds sufficient to equal the sum apportioned to the State of Tennessee by or under the United States Government during each of the five years for which Federal funds are apportioned by the said Act, and to maintain the roads constructed under the provisions of said Act, and to make adequate provisions for carrying out such maintenance."

Acts 1917, *Chapter* 58, Appendix A-4, page 18, authorizes the State Treasurer and State Comptroller to receive from the United States Treasurer such funds as may become available for Tennessee by authority of an Act of Congress entitled "An Act to provide that the United States shall aid the States in the construction of rural post roads and for other purposes."

Acts 1917, *Chapter* 73, Appendix A—5, page 19, amends Chapter 8, Public Acts of 1915, relating to registration of motor vehicles, increasing the registration fee and covering the same into the highway fund.

Acts 1917, *Chapter* 74, Appendix A—6, page 28, creates the first complete modern scheme of State Highway organization and levies a direct annual tax for highway purposes of one mill on each dollar of taxable property within the State.

Acts 1919, *Chapter* 149, Appendix A—7, page 40, creates a State Highway Commission composed of three members and completely reorganizes the Highway Department, and at Section 10 provides that all funds

arising from registration on licensing of motor vehicles shall be used for highway purposes, and at Section 12 authorizes the State Highway Department to cooperate with the Federal Government with reference to contracts and arrangements to receive Federal aid on highways, and at Sections 15 to 19 fixes a license fee on motor vehicles and provides that all funds raised by the Act shall be used for highway purposes.

Acts 1923, *Chapter* 58, Appendix A—8, page 58, imposes a gasoline tax of two cents on each gallon of gasoline sold to provide funds for highway purposes.

Acts 1925, *Chapter* 4, Appendix A—9, page 66, increases the gasoline tax for highway purposes to three cents per gallon.

Acts 1925, *Chapter* 72, Appendix A—10, page 68, authorizes the State to borrow $5,000,000.00 to be used in the construction of highways and bridges.

Acts 1927, *Chapter* 1, Appendix A-11, page 70, authorizes the State to borrow $5,000,000.00 to be used in the construction of toll bridges.

Acts 1927, *Chapter* 6, Appendix A—12, page 78, authorizes the State to borrow $4,500,000.00 to be used in the construction of toll bridges.

Acts 1927, *Chapter* 37, Appendix A—13, page 85, authorizes the State to borrow $2,000,000.00 to be used in the construction of toll bridges.

Acts 1927, *Chapter* 83, Appendix A—14, page 92, authorizes the State to borrow $10,000,000.00 to be used in the construction of highways and bridges.

Acts 1929, *Chapter* 5, Appendix A—15, page 94, authorizes the State to borrow $600,000.00 to be used in the construction of toll bridges.

Acts 1929, *Chapter* 11, Appendix A—16, page 101, increases the gasoline tax for highway purposes to five cents per gallon.

Acts 1929, *Chapter* 36, Appendix A—17, page 103,

authorizes the State to borrow $25,000,000.00 to be used in the construction of highways and bridges.

Acts 1929, *Chapter* 104, Appendix A—18, page 105, authorizes the State to borrow $500,000.00 to be used in the construction of toll bridges.

Acts 1929, *Chapter* 112, Appendix A—19, page 111, authorizes the State to borrow $250,000.00 to be used in the construction of toll bridges.

Acts 1929, Chapter 4, Extra Session, Appendix A—20, page 117, authorizes the State to borrow $10,000,000.00 to be used in the construction of highways and bridges.

The foregoing statutes of Tennessee, beginning with the year 1915 and extending through the year 1929, are referred to in this brief and printed as Appendix A hereto, for the purpose of demonstrating the extent to which the State of Tennessee has gone in the last fifteen years to organize a complete and comprehensive highway system in the State and to provide revenue for the construction of highways and bridges, so as to make the same available for extensive interstate and intrastate travel. It can be seen at a glance from the foregoing summary of the Acts referred to that millions upon millions of dollars have been spent by the State of Tennessee within the past decade in highway construction in Tennessee along with funds obtained from the Federal Government on Federal Aid Projects. Under these Acts of the General Assembly of Tennessee, the good faith of the sovereign State of Tennessee is pledged to provide funds to properly maintain the highways thus constructed; and it must be a matter of judicial knowledge, deducible from the enormous funds provided by the Acts of the General Assembly referred to, that the highways of the State are being properly maintained; and if this conclusion is correct, then we respectfully submit that it is no concern of the appel-

lant that the particular exaction complained of and paid by it to the State and sought to be recovered in this proceeding was not levied and collected specifically for highway purposes. In other words, if the highways over which the appellant operates are properly and satisfactorily maintained, then the appellant has no ground upon which to stand as the basis for complaint and cannot recover in this proceeding.

Acts 1929, *Chapter* 58, Appendix C, page 127, is what is known as the "Motor Vehicle Regulatory Act" and an examination of the Act would reflect the fact that the appellant cannot operate motor vehicles for hire over the highways of the State without first having obtained a certificate of convenience and necessity from the Railroad and Public Utilities Commission of the State of Tennessee declaring that the public convenience and necessity warrants such operation. Thus a compliance by the appellant with the provisions of said Act concedes that the highways over which the appellant operates are in a proper state of repair and are properly maintained by the State. Said Act at Section 1 provides in part as follows:

> "That no person, firm, corporation, association, their lessees, trustees, or receivers . . . shall operate any motor-propelled vehicle (not usually operated on or over a rail or rails) for the transportation of persons or property for compensation on any public highways in any town, city or county in this State, without having first obtained from the Railroad and Public Utilities Commission of the State of Tennessee a certificate declaring that the public convenience and necessity warrant such operation; . . ."

In addition to this, the stipulation of facts filed in this proceeding on February 25, 1930, at Section 6 thereof, provides as follows:

"That the complainant operates its busses interstate, over a route or highway constructed jointly by the Federal Government and the State of Tennessee, *and maintained by the State of Tennessee*, the line being between Cincinnati, Ohio, and Atlanta, Georgia, via Louisville, Kentucky, and Nashville, Tennessee." (Italics added.)

(R., p. 14.)

The appellant therefore stands in this record in the position of having to concede that the Act of 1929 requiring a certificate of convenience and necessity for a motor carrier operator applies to it, and admitting by the stipulation found in the record that the highways over which it operates were constructed by the Federal and State Governments and that they are being maintained by the State of Tennessee.

We therefore earnestly insist that the appellant cannot be heard to complain because of the fact that the exaction made of it by the State is not made for the specific purpose of the construction and maintenance of the highways. All the appellant could complain of is that the highways are not being properly maintained by the State. There is and can be no complaint of this character in this proceeding, but the statute making the exaction of the appellant is challenged solely and alone on the ground that it is violative of the commerce clause of the Federal Constitution, whereas, under this record, the appellant is moving each day with its motor bus operations in the carriage of passengers for hire freely and uninterruptedly in interstate commerce over highways properly maintained by the State of Tennessee at its own expense. Not until the State fails in its sovereign duty to properly maintain the highways can the appellant complain of the exaction made by it under the statute. See *Johnson Transfer and Freight Line* v. *Perry et al.* (Appendix E).

Proposition No. 3: THE EXACTION COMPLAINED OF AND CHALLENGED BY APPELLANT IS REASONABLE IN AMOUNT AND NOT INCOMMENSURATE WITH THE USE TO WHICH THE APPELLANT PUTS THE STATE HIGHWAYS OVER WHICH IT OPERATES.

It has been noted that the Act which the appellant challenges fixes the exaction complained of at $500.00 per annum for each bus carrying over twenty passengers and not less than thirty passengers. These bus operations are from Cincinnati, Ohio, to Atlanta, Georgia, via Nashville and Chattanooga, Tennessee, thereby entering the State at the Kentucky-Tennessee line on the north, traveling thence through Nashville, and from there diagonally across the State and into Georgia near Chattanooga. For convenience, we file as a part of this brief and annex hereto a copy of the last State Highway map of the State of Tennessee. By reference to the tables on the back of said map, under the words "Highway No. 1," "Highway No. 2," and "Highway No. 6," it appears that the distance from the Kentucky-Tennessee line to Nashville over Highway No. 6 is 51 miles; that the distance between Nashville and Murfreesboro over Highway No. 1 is 32 miles and that the distance from Murfreesboro to Chattanooga over Highway No. 2 is 113 miles, thereby making the total distance from the Kentucky-Tennessee line on the north via Nashville to Chattanooga of 196 miles, with some three or four miles from Chattanooga to Rossville, Georgia. So it is that on each operation across the State, the bus of the appellant will travel approximately 200, or on a round trip, 400 miles. Assuming that each bus travels only once across the State each day in the year, and travels 200 miles per day, such bus would travel in the year 73,000 miles and the operator would have to pay the exaction of $500.00, or $1.37 per trip of 200 miles. If such bus should make a round trip

each day across the State, the total mileage for the year would be 146,000 miles for such vehicle over the highways of the State maintained by the State and permitted to be used by the appellant. It can hardly be insisted that this is an unreasonable exaction from the appellant for the use of the highways.

In the brief of the appellant, the point is undertaken to be made that if an interstate operator should come into the State of Tennessee on the west at or near Memphis and operate entirely across the State eastward to Bristol, such operator would cover more than three times as much mileage as the appellant does in its operation and that therefore the exaction is unequal and discriminatory.

There is no showing in this record that there is any interstate operator operating longitudinally across the State of Tennessee from Memphis to Bristol, and besides this, if the exaction made of appellant for its use of the highways is not unreasonable, then the appellant is not in a position to complain that some other operator might not have to pay an equal amount with appellant.

Proposition No. 4: THAT THE TAX COMPLAINED OF APPEARS IN WHAT IS DENOMINATED BY THE GENERAL ASSEMBLY OF TENNESSEE AS THE "REVENUE BILL" DOES NOT MAKE IT UNLAWFUL.

The courts will look to the object and intent of the law-making body in levying a tax to determine the nature of the law and its purposes, and will not strike down the tax because the Legislature inaptly chose words to express its intent.

As was said by the Court in the case of *MacAllen Company* v. *Massachusetts*, 279 U. S., 625, 73 L. Ed., 879:

> "Neither state courts nor legislatures, by giving the tax a particular name, or by using some

form of words, can take away our duty to consider its nature and effect. And this Court must determine for itself by independent inquiry whether the tax here is what, in form and by the decision of the state court, it is declared to be. . . ."

We submit that it can make no difference that the exaction made of appellant happens to fall in a revenue bill; that it can make no difference that the bill provides that such exaction shall be covered into the General Fund; that so long as the State of Tennessee makes available other funds for highway maintenance purposes to adequately keep up and maintain the highways, it can make no difference that the money paid to the State under this Act is used for some other purpose. Unless and until the State fails to properly keep up and maintain the highways over which the appellant operates, the appellant cannot complain and cannot successfully challenge the Act on the ground that it provides that the funds raised thereunder shall go into the General Fund of the State.

This was the theory of Mr. Justice Chambliss of the Supreme Court of Tennessee in his opinion, copy of which is filed as Appendix D hereto.

Proposition No. 5: IN THE ABSENCE OF STATUTORY ENACTMENT BY THE FEDERAL GOVERNMENT TO REGULATE AND TAX INTERSTATE MOTOR CARRIERS OPERATING FOR HIRE, EACH STATE MAY TAX AND REGULATE SUCH OPERATIONS.

The Federal Government has not passed any statute regulating the operation of motor vehicles for hire engaged in interstate commerce. Neither has it undertaken to impose a tax thereon. It results that the field for legislation is thus left to the various states over whose highways the operations are carried on.

In the case of *Morris* v. *Duby*, 274 U. S., 143, 74 L. Ed., 971, in an opinion by Mr. Chief Justice Taft, it was recognized that:

> "The Acts of Congress disclose no provision, express or implied, by which there is withheld from the state its ordinary police power to conserve the highways in the interest of the public and to prescribe such reasonable regulations for their use as may be wise to prevent injury and damage to them. In the absence of national legislation especially covering the subject of interstate commerce, the state may rightly prescribe reasonable regulations adapted to promote safety upon its highways and the conservation of their use applicable alike to vehicles moving in interstate commerce and those of its own citizens." Accord, *Hendrick* v. *Maryland*, supra.

Again in the same opinion it was stated:

> "With the increase in number and size of the vehicles used upon a highway, both the injury and the wear and tear grows. To exclude unnecessary vehicles—particularly the large ones commonly used by carriers for hire—promotes both safety and economy. State regulation of that character is valid even as applied to interstate commerce, in the absence of legislation by Congress which deals specifically with the subject." Accord, *Vandalia R. Co.* v. *Public Service Commission*, 242 U. S., 255, 61 L. Ed., 276.

Proposition No. 6: THERE IS NO DISCRIMINATION IN THE TENNESSEE STATUTE COMPLAINED OF AGAINST INTERSTATE OPERATORS IN FAVOR OF INTRASTATE OPERATORS.

The Tennessee statute, in so far as it is applicable, is printed as Appendix B hereto and a reference thereto at page ,— will show that intrastate operators are taxed exactly the same as interstate operators. It results that there can be no discrimination.

Conclusion—We therefore respectfully submit that there is no reversible error in the action of the Supreme Court of Tennessee in reversing the Chancellor and dismissing the bill filed by the appellant and denying any relief.

This the 10th day of March, 1931.

Respectfully submitted,

L. D. SMITH,
Attorney-General.
ROY H. BEELER,
Solicitor General.
Attorneys for Appellee.

APPENDIX A

TENNESSEE LAWS CREATING HIGHWAY DEPARTMENT AND PROVIDING REVENUES THEREFOR

ACTS 1915, CHAPTER 8, PAGE 14

SENATE BILL NO. 296.

(By Mr. J. J. Murray)

AN ACT to be entitled an Act to require the registration of automobiles, motorcycles and other motor propelled vehicles; to require an annual registration of all such vehicles, to provide for payment of a fee for all such registrations and to provide a penalty for violation of this Act.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That before the owner of any automobile, motorcycle, auto truck, traction engine or other vehicle of like character used for the purpose of conveying persons or freight or for any other purpose, whether such vehicle is propelled by steam, gasoline or electricity, or any other mechanical power, shall operate or permit to be operated, upon any street, road, highway or any other public thoroughfare or elsewhere in Tennessee such owner shall register such vehicle with the Secretary of State, giving the motor power or horse power and make of same together with the name and residence address of such owner, and shall upon payment of the following fees:

For automobiles of more than four passenger seating capacity ---------- $7.50
For automobiles of four passenger or less seating capacity auto trucks or traction engines -- $5.00
For motorcycles ---------- $2.50

receive from the Secretary of State a certificate showing such registration, which certificate shall be numbered as issued in consecutive order, and shall

thereafter, upon payment of a fee of $1.00 register said certificate with the County Court Clerk of the County in which the owner may reside, provided that if application shall be made for registration of an automobile or motorcycle under this section after the first of September in any year, the applicant shall be required to pay but one-half the registration fee hereinabove provided for.

SEC. 2. *Be it further enacted,* That whenever the ownership of such vehicle shall become changed by sale or otherwise, the purchaser thereof shall be required to notify the Secretary of State of such transfer and receive a transfer certificate in his name for which he shall pay the following fees:

For automobiles of more than four passenger seating capacity ---------- $7.50
For automobiles of four passenger or less seating capacity auto trucks or traction engines -- $5.00
For motorcycles ---------- $2.50

He shall be required to register such certificate with the County Court Clerk of the County in which he resides and pay therefor a fee of 50 cents, and the registration shall not be considered completed until said registration with the County Court Clerk is made.

SEC. 3. *Be it further enacted,* That the owner of such vehicle is hereby required to display, in a conspicuous manner at both front and rear of such vehicle, a number of size, color, dimensions and character as the Secretary of State may designate, *provided* that size and number of tag shall be the same each year. The tag shall show, in addition to the registration number of machine, the year and the abbreviation of Tennessee.

Provided, further that the Secretary of State shall furnish, without cost to the owner of the machine, a set of two number plates, and owners are required to use these number plates on their machine, and no other number plates shall be used.

SEC. 4. *Be it further enacted*, That every dealer in, or manufacturer of motor vehicles and traction engines, motorcycles, and auto trucks shall, instead of registering each motor vehicle and traction engines, motorcycles, and auto trucks owned by him, make application to and receive from said Secretary of State a general distinguishing number or mark. This certificate and number shall be of different color, number and dimensions from that of an owner of a motor vehicle and traction engines, motorcycles and auto trucks above described in Section 1 and shall be known as a demonstration number and the same number may be used by said dealer or manufacturer upon each of the machines that he uses for demonstration purposes. Said dealer or manufacturer shall pay the Secretary of State for such number the sum of $10.00. This number shall be renewed annually as other registrations and the annual registration fee shall be $10.00.

SEC. 5. *Be it further enacted*, That each owner of a motor vehicle shall annually hereafter on or before the first day of January of each year, make a report upon a printed form furnished him by the Secretary of State, giving the same information as required in the original registration and shall pay annually a fee as follows:

For automobiles of more than four passenger seating capacity ---------- $7.50
For automobiles of four passenger or less seat-

ing capacity, auto trucks or traction engines__$5.00
For motorcycles _____$2.50

and upon payment of such fees shall receive from the Secretary of State a certificate showing such registration, which certificate shall carry the same number as that of the original certificate, and shall also receive from the Secretary of State a set of two number plates on which shall, in addition to the registration number have the year and the abbreviation "Tenn."

SEC. 6. *Be it further enacted*, That after deducting the necessary expenses incident to the collection of these fees, including cost of number tags, the Secretary of State shall annually on the first day of January, pay the amount so collected into the State Treasury, taking the Treasurer's receipt therefor.

SEC. 7. *Be it further enacted*, That every dealer or other person selling an automobile, auto truck, traction engine or motorcycle either new or second-hand to any person in the State of Tennessee, shall within three days from date of sale, notify the Secretary of State of said sale, giving the name of purchaser, make and horsepower of machine.

SEC. 8. *Be it further enacted*, That any person who fails or refuses to notify the Secretary of State, of the sale of any motor vehicle as provided in Section 7, or any person who fails or refuses to apply for registration or transfer certificate as provided by this Act, shall be guilty of a misdemeanor and upon conviction, shall be fined not less than five dollars ($5.00) nor more than fifty dollars ($50.00) together with all costs of said prosecution, and all grand juries are hereby given inquisitorial powers as to the enforcement of this Act.

SEC. 9. *Be it further enacted*, That in the event any section or sections, or portion of a section or sections, of the foregoing Act shall be by the courts declared to be invalid, such holding of the court shall not invalidate or render ineffective the remainder of this Act, and shall not affect the validity of the remainder of this Act.

SEC. 10. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are, hereby repealed, and that this Act take effect on July 1, 1915.

Passed January 29, 1915.

HU C. ANDERSON,
Speaker of the Senate.
WM. P. COOPER,
Speaker of the House of Representatives.

Approved January 29, 1915.

TOM G. RYE,
Governor

ACTS 1915, CHAPTER 100, PAGE 256

SENATE BILL NO. 563.

(By Mr. W. A. Johnson)

A BILL to be entitled An Act establishing a Highway Department, creating a State Highway Commission, prescribing the powers and duties of the State High-Highway Commission, providing for the designation and adoption of a State Highway plan of the State, creating a highway fund, and apportioning the proceeds thereof to the respective counties and the Highway Department, and applying the proceeds of the registration of motor vehicles, amending Section 6, of Senate Bill 296, Chapter 8, of the Acts of the 59th General Assembly and acquiring rights of way therefor, by exercising of the power of eminent domain.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That there is hereby created a State Highway Commission, and a State Highway Department, to be composed of six persons who shall be residents of Tennessee, three of which shall be appointed by the Governor, and three who shall be members ex-officio. The persons who shall, for the time being, act as ex-officio members, shall be the State Geologist, the Dean of the Engineering Department of the University of Tennessee, and the Governor, not more than two members appointed by the Governor shall be of the same political party. The Governor shall designate the time each Commissioner shall hold office and the appointment of each one of the three Commissioners appointed shall be from each Grand Division of the State, one for two years, one for four years, and one for six years, from July 1, 1915, and thereafter the term of members so appointed shall be for six

years, although they shall continue to hold office until their successors are appointed and qualified. Appointments to vacancies arising during a term shall be only for the unexpired term. Commissioners may be removed for sufficient cause by the Governor. Each member of said Commission shall qualify by taking an oath to perform his duty faithfully, impartially, and for the best interests of the State. A majority of the members of the Commission shall constitute a quorum for the transaction of business.

SEC. 2. *Be it further enacted*, That the Commission shall have its office at the Capitol, and shall organize by electing from among its members a Chairman, who will hold office for two years, from July 1, 1915, or until his successor is elected and qualified, and by the election of a Secretary, qualified and experienced in road building and maintenance, to be known as Secretary of the State Highway Department, and who shall hold office for two years. The Chairman shall have power to call meetings of the Board whenever he may deem it expedient. Meetings shall be likewise held upon the written request of three members of the Commission. Notice of meetings shall be given each member two days in advance thereof. The appointed members of the Commission shall receive actual expenses incurred in the discharge of his duties and each member who attends a meeting of the Board shall be allowed his mileage to and from his home, at the rate of three cents per mile.

SEC. 3. *Be it further enacted*, That the Secretary of the State Highway Department, shall give his entire time to the duties of his office, and shall receive such compensation as the board shall fix and determine upon, and that he shall be given such assistants and

clerical help in his department as the Commission may deem necessary, and shall be named by the Secretary, but subject to the approval of the Commission.

SEC. 4. *Be it further enacted,* That the Secretary shall, before entering upon his duties of office, file with the Secretary of State, his oath of offce, with Bond to the State of Tennessee for the faithful and honest performance of his duties in the sum of Ten Thousand dollars, said Bonds to be approved by the Governor of the State.

SEC. 5.—*Be it further enacted,* That the State Highway Department shall be provided with suitable offices in the city of Nashville, said office shall be under the charge of the Secretary of the State Highway Commission and shall be kept open at all times for business and the convenience of the public, and shall be the repository for all records of the Department of State Highway.

SEC. 6. *Be it further enacted,* That it shall be the duty of the State Highway Commission to hold meetings at such times, and for such periods as they may deem advisable for the proper carrying out of the provisions of this Act, and it shall be the duty of the Commission to consider and determine at such meetings, all questions relating to the general policy of the department of highways and the conduct of the work in general.

SEC. 7. *Be it further enacted,* That the Secretary of the Department of State Highways, shall have charge of all records, of the Department, shall keep a Book of Record of all proceedings and orders pertaining to the business of the Department and shall keep on file copies of all plans, specifications and estimates

prepared by the Department. The Commission shall cause to be made and kept by this Department, Blueprints and Maps, showing a general highway plan of the State, such plan to consist of the main traveled roads, as will when improved, show and provide a connected system of improved highways throughout the State, and collect information and statistics with reference to the mileage, character and condition of Highways and Bridges, in the different counties of the State, and shall investigate and determine the method of road construction best adapted to the various sections of the State, and shall establish standards for the construction and maintenance of Highways in the various counties, giving due regard to topography, natural conditions, availability of road material, prevailing traffic conditions, and ways and means of the Counties to meet their portion of the cost of building and maintaining roads under the provisions of this Act. The Commission may at all times be consulted by the county and district officers having authority over highways and bridges and in like manner call on such county and district officials for information relative to highways and bridges within their county or district, in order to determine the character and have the general supervision of the construction, repair and maintenance of all roads improved under the provisions of this Act.

That the County Court of each county shall be informed semi-annually or at any time by request from any member of the County Court by the Highway Commission relative to the price of all bridges, culverts, road material, tools, implements or machinery. The Highway Commission shall at all times keep the prices of said bridges, culverts, road material, tools, implements or machinery from reliable firms, com-

panies or corporations. The Highway Commission shall also keep blueprints of different standard bridges to distribute as required by this Section.

SEC. 8. *Be it further enacted*, That after the taking the effect of this Act, the State Highway Commission shall proceed to designate in each County of the State, main traveled roads which will connect all county Seats, and which are deemed of sufficient importance to come under the provisions of this Act, and receive "Federal" aid for their improvement, which road, so designated, shall be embodied in the general "Highway Plan" of the State, and all additional roads designated from time to time, as a part of the highway plan, shall be subject to the State Highway Commission.

SEC. 9. *Be it further enacted*, That all Counties and Municipal Corporations of the State, expressing a desire to the "Department of State Highways" to be entitled to receive "Federal" aid and the cooperation of the Highway Department in the improvement and maintenance of any road or Highway in their respective county when complying with the provisions of this Act governing the same shall have the cooperation desired by the State Highway Department.

SEC. 10. *Be it further enacted*, That whenever the State Highway Commission finds it necessary, it shall have the power to alter the course or grade, or otherwise improve any road selected, adopted or accepted for Federal aid, and taken over and improved as a State Highway, the Counties or Cities wherein such roads lie shall have the authority to acquire rights of way therefor, either by donation by the owners of the land through which highways shall run, or by agreement between such owners and the County Court, or

County Commissioners, or legislative bodies of such cities or towns or by the exercise of the power of the eminent domain, in the same manner as provided for acquiring property for other public uses, provided, the entire cost of securing rights of way shall be paid by the counties or towns.

SEC. 11. *Be it further enacted*, That the "Federal" aid roads under the provisions of this Act shall be marked with suitable signs, carrying the word "State Highway" and mile posts giving directions and distances to villages shall be erected at the cross or intersection of roads, the same to be paid for as part of the cost of the Highway.

SEC. 12. *Be it further enacted*, That all moneys accruing from the annual registration and licensing of automobiles in the State, under any law now in existence, or that may be hereafter enacted, over and above the necessary expense incident to the collection of same, and all penalties paid for the violation of such laws, which are paid into the State Treasury, shall be set aside as Highway funds, and shall be available for the purposes of this Act, and expended under the direction of the State Highway Department for the maintenance of public roads in the respective counties of the State, in the same proportion as collected from the said respective counties, after deducting ten per cent of same for the maintenance of the State Highway Department.

SEC. 13. *Be it further enacted*, That the State Highway Commission may execute any highway work or part thereof, under this Act, by means of the labor of State or County convicts, provided that such convicts at the time shall be available by law and satisfactory arrangements can be made by which they may

be used. When such work is executed by means of the labor of State convicts, the State Highway Commission shall pay for such labor so used on such highway work according to rules and regulations prescribed by the State authorities, who may furnish such convicts, and if the convicts so used are County convicts, the county authorities controlling such convicts shall receive pay for same at the price to be agreed on by the State Highway Commissioners and the respective County officials authorized to furnish such labor.

SEC. 14. *Be it further enacted,* That the State Highway Commission shall have full power and lawful authority to make any and all necessary and proper arrangements, contracts and agreements, to receive aid and assistance from the Federal Government in constructing, repairing and maintaining roads provided for and contemplated in this Act. All contracts and agreements in this respect shall be approved by the Attorney-General of the State, as herein provided.

SEC. 15. *Be it further enacted,* That the word "road" or "highway" shall be construed to include all bridges upon, or which form, or shall form a part of the road or highway to be maintained or constructed as Federal Aid Highway, under the provisions of this Act.

SEC. 16. *Be it further enacted,* That all checks, vouchers or warrants drawn or given for the payment of any and all expenses pertaining to the department of State Highways, shall be signed by the Chairman of the Highway Commission and countersigned by the Secretary, and that all traveling expenses incurred by the Commissioners in the discharge of their duties must be itemized and acknowledged before payment can be made by this department and that an annual

report of this department shall be made to the Governor.

SEC. 17. *Be it further enacted*, That each section of this Act is hereby declared to be separate and independent from all other sections thereof and the invalidity of any section shall not be held to effect the validity of the remaining sections, as such sections will have been passed and enacted by the General Assembly if the invalid sections, if any, had not been incorporated in this Act.

SEC. 18. *Be it further enacted*, That Section 6, of Senate Bill 296, passed by the 59th General Assembly be amended to read, as follows:

That after deducting the necessary expenses incident to the collection of these fees including cost of number tags the Secretary of State shall on the first day of each month pay the amount so collected in the State Treasury, said funds to be set aside and designated as "Highway Funds."

SEC. 19. *Be it further enacted*, That all laws and parts of laws in conflict herewith be, and the same are hereby repealed.

SEC. 20. *Be it further enacted*, That this Act take effect from and after July 1, 1915, the public welfare requiring it.

Passed May 11, 1915.

ALBERT E. HILL,
Speaker of the Senate.

WM. P. COOPER,
Speaker of the House of Representatives.

Approved May 15, 1915.

TOM C. RYE,
Governor.

ACTS 1917, CHAPTER 16, PAGE 31

SENATE BILL No. 14.

(By Messrs. W. J. Matthews, N. N. Nichols and Others.)

AN ACT to be entitled "An Act to assent to the provisions of an Act of Congress, and authorizing the State Department of Highways to enter into contracts and agreements with the United States Government relating to the construction and maintenance of roads, and pledging the faith of Tennessee, to make available certain funds for a given length of time, and to expend funds on a system of roads, and to provide the exemption of certain revenue."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the State of Tennessee hereby assents to the provisions of the Act of Congress, approved July eleventh, nineteen hundred and sixteen, entitled, "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes, thirty-ninth U. S. Statutes at Large, page three hundred and fifty-five. The Department of Highways of the State of Tennessee is hereby authorized to enter into all contracts and agreements with the United States Government by and through its Secretary and its State Highway Engineer, countersigned by the Attorney-General of the State of Tennessee, relating to the construction and maintenance of rural post roads under the provisions of the said Act of Congress, and to submit such projects or program of construction and maintenance as may be required by the Secretary of Agriculture, and do all other things necessary to fully carry out the co-operation contemplated and provided for by the said Act.

SEC. 2. *Be it further enacted*, That the good faith of the State is hereby pledged to make available funds sufficient to equal the sum apportioned to the State of Tennessee by or under the United States government during each of the five years for which Federal funds are appropriated by the said Act and to maintain the roads constructed under the provisions of said Act, and to make adequate provisions for carrying out such maintenance.

All moneys accruing to the State Highway fund hereafter created by appropriation or tax levy, or otherwise, shall become available for expenditure in the construction and maintenance of highways, and all Federal funds apportioned to this State under the said Act of Congress, shall be expended upon a system of State roads as provided for by the said Act. *Provided*, that this Act shall not apply to or include the tax now collected under the provisions of Chapter No. 8, Senate Bill No. 296, Public Acts of Tennessee, 1915, and expended under the provisions of Chapter No. 100, Senate Bill No. 563, Public Acts of Tennessee 1915.

SEC. 3. *Be it further enacted*, That all laws and parts of laws in conflict with this Act herewith be, and the same are hereby repealed.

SEC. 4. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 30, 1917.

W. R. CRABTREE,
Speaker of the Senate.

CLYDE SHROPSHIRE,
Speaker of the House of Representatives.

Approved February 3, 1917.

TOM C. RYE,
Governor.

ACTS 1917, CHAPTER 58, PAGE 127.

SENATE BILL No. 123.

(By Mr. Nichols.)

A BILL entitled, "An Act to authorize the treasurer and comptroller to receive certain funds from the United States Treasury to credit same to certain projects, and to disburse same through the State Highway Department when ordered by the United States Department of Agriculture."

SECTION 1. *Be it enacted by the General Assembly of State of Tennessee,* That the Treasurer and Comptroller are hereby authorized to receive from the United States Treasurer such funds as may become available for Tennessee by authority of an Act of Congress entitled, "An Act to provide that the United States shall aid the States in construction of rural post roads and for other purposes," and that the said funds shall be credited to such projects as ordered by the United States Department of Agriculture to be disbursed by vouchers issued by the State Highway Department upon the approval of the said Department of Agriculture.

SEC. 2. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed March 27, 1917.

W. R. CRABTREE,
Speaker of the Senate.

CLYDE SHROPSHIRE,
Speaker of the House of Representatives.

Approved March 31, 1917.

TOM C. RYE,
Governor.

ACTS 1917, CHAPTER 73, PAGE 210.

HOUSE BILL No. 1033

(By Messrs. Bond, Davis of Wilson, Ashlye, Bratton.)

AN ACT to amend Chapter No. 8 of the Public Acts of 1915, entitled, "An Act to be entitled an Act to require the registration of automobiles, motorcycles, and other motor propelled vehicles; to require an annual registration of all such vehicles, to provide for a payment of a fee for all such registration and to provide a penalty for violation of this Act"; to provide for the payment of certain fees to the county court clerk of the various counties, and to empower certain county and State officials with the enforcement and administration of this Act and of the funds collected by the provisions of this Act.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapters 8 of the Acts of 1915, passed January 29, 1915, entitled, "An Act to be entitled an Act to require the registration of automobiles, motorcycles, and other motor propelled vehicles; to require the registration of all such vehicles; to provide for a payment of a fee for all such registrations and to provide a penalty for violation of this Act," be amended so as to read as follows:

SEC. 2. *Be it further enacted,* That before the owner of any automobile, motorcycle, autotruck, or other vehicle of like character used for the purpose of conveying persons freight or for any other purposes, whether such vehicle is propelled by steam, gasoline or electricity or any other mechanical power, shall operate or be permitted to operate upon any street, road, highway or any other public thoroughfare in Tennessee, such owner shall register such vehicle with the

State Department of Highways through the County Court Clerk in the county in which owner resides, giving the motor number, rated horse power, tonnage capacity of motor trucks and make of same together with the name and residence of such owner, and shall upon payment of the following fees: For all motor trucks, freight and passenger, 30 cents per rated horse power of motor so operated as rated by the Society of Automobile Engineers and an additional fee of $3.00 per ton for each ton carrying capacity; (factory rating); for automobiles, motorcycles or other vehicles of like character 30 cents per rated horse power of the motor so operated as rated by the Society of Automobile Engineers and shall receive from the State Department of Highways a certificate showing such registration, *Provided* that if application shall be made for registration of an automobile, motorcycle, auto truck, or other vehicle of like character under this section, after the first of September in any year, the applicant shall be required to pay but one-half the registration fee hereinabove provided for; *Provided, however*, that owners of regularly licensed vehicles registered in any State or territory of the United States, Canada, or Mexico, may have the privilege of operating upon the public roads of Tennessee for a period of not exceeding thirty days. *Provided, further*, that upon the sworn statement from the head of any department of the State government or the County Judge or the Chairman of the County Court of any county, or the mayor of any town or city that the vehicle for which application is made for registration, is owned by and operated exclusively for the State, county, city, or town, the State Department of Highways through the County Court Clerk shall issue a license

and number plate as above provided except that no charge shall be made for same by the State, but the County Court Clerk shall have the right to collect the fee of twenty-five cents for registration, but in all such cases the application must be accompanied by a sworn statement as above provided and the County Court Clerk shall not issue any number plate until special authority is obtained from the State Department of Highways.

SEC. 3. *Be it further enacted,* That whenever the ownership of such vehicle shall become changed by sale or otherwise, the registration number shall remain upon such vehicle as a part thereof until such registration expires by law, but the purchaser thereof shall be required to notify the State Department of Highways through the County Court Clerk of such transfer and receive a transfer certificate in his name for which he shall pay a fee of one dollar. He shall be required to register such certificate with the County Court Clerk of the county in which he resides and pay therefor a fee of twenty-five cents, and the registration shall not be considered completed until said registration with the County Court Clerk is made.

SEC. 4. *Be it further enacted,* That the owner of such vehicle is hereby required to display, in a conspicuous manner, at both front and rear of such vehicle, a number plate of size, color, dimension and character as the State Department of Highways may designate, *Provided,* that the size of the number plate shall be the same each year. The number plate shall show, in addition to the registration number of such machine, the year and the abbreviation of Tennessee. *Provided, further, that* the State Department of High-

ways through the County Court Clerk shall furnish, without additional cost to the owner of such machine, a set of two number plates, and owners are required to use these number plates on their machines and no other number plates shall be used.

SEC. 5. *Be it further enacted*, That all dealers in, or manufacturer of motor vehicles, motorcycles, auto trucks, or like vehicle shall, instead of registering each motor vehicle, motorcycle, auto truck or like vehicle owned by him, make application to and receive from the said State Department of Highways through the County Court Clerk a general distinguishing number or mark. This certificate and number shall be of different color and number from that of any owner of a motor vehicle, motorcycle, auto truck, or like vehicle as described in Section 2 of this Act, and shall be known as a demonstration number, and the same number shall be used by said dealer or manufacturer only while such vehicle is actually being demonstrated to a customer or prospective purchaser.

Motor vehicles, motorcycles, auto trucks, or like vehicles used in the service of the manufacturer, sales agent or dealer must be provided with a regular license number plate and pay therefor the fee set forth in Section 2 of this Act, and shall not at any time use or display the special demonstration number plate while the service of the owner, agent or dealer other than for demonstration as aforesaid. Said dealer or manufacturer shall register with and pay to the State Department of Highways through the County Court Clerk for such special demonstration number the sum of ten dollars. This registration shall be renewed annually as other registrations and the annual registration fee shall be ten dollars, and the owner shall regis-

ter same with the County Court Clerk and pay a fee of twenty-five cents; *Provided* that duplicate demonstration number plates in series may be issued upon application to the State Department of Highways through the County Court Clerk, at a cost of fifty cents each.

SEC. 6. *Be it further enacted,* That each owner of a motor vehicle, motorcycle, auto truck or like vehicle shall annually hereafter, on or before the first day of January of each year make application to the State Department of Highways through the County Court Clerk for annual registration, giving t he same information and paying the same fees as required in an original registration including re-registration with the County Court Clerk, and upon payment of such fees shall receive from the State Department of Highways through the County Court Clerk a certificate showing such registration, and shall also receive from the State Department of Highways through the County Court Clerk a set of two number plates on which shall, in addition to the registration number, have the year and the abbreviation of Tennessee.

SEC. 7. *Be it further enacted,* That it shall be the duty of the County Court Clerk of each county to collect the fees herein provided and to enforce the provisions of this Act; it shall be his duty to ascertain the names of owners of all automobiles, motor truck, motorcycles, and vehicles of like character in his county and to issue distress warrants against any such owner who is operating such vehicle in violation of the provisions of this Act after March first of any year, in which case the usual distress warrant fees shall obtain; he shall take registration applications from the

owners of all such vehicles specified in this Act; shall collect the fees provided in this Act; shall distribute the number plates provided by the State Department of Highways; shall keep a complete record in his office for the benefit of the general public of all vehicles registered in his county; shall deposit daily in some State depository designated by the State Treasurer all highway or road funds collected under this Act for the State, said funds to be deposited to the credit of the State Treasurer for the State Highway Fund; shall make a report not later than the fifth of each month to the State Treasurer or Comptroller showing the amount of such deposits and shall make a report not later than the fifth of each month to the State Department of Highways showing number in numerical order of each number plate issued during the preceding month and give the name and address of the person to whom issued and the amount collected and shall account to the State Department of Highways for all number plates consigned to him; he shall collect from the owner making application for registration of a vehicle a fee of twenty-five cents which shall be his compensation in full; and it shall be the duty of the State Treasurer to designate to the County Court Clerk in each County a State depository in such county in which the funds collected under this Act shall be deposited, he shall keep an accurate and separate account of such funds and shall on the first day of March, June, September, and December, or as much oftener as may be required by the State Department of Highways, withdraw from each of such banks ten per cent of the funds deposited since the last such withdrawal which fund shall be placed in the State Treasury to the credit of the State Department of Highways for the main-

tenance of such department and for the payment of all the costs to the department of the collection of such fund, which shall include cost of number plates, printing certificates and other printing pertaining to collection of such fund, postage, clerical help, and such other expense as may be incurred by the department in the collection of this fund, which ten per cent shall constitute the sole amount that may be withdrawn from this fund. The remainder of the fund shall be expended in the county from which collected under the direction and supervision of the State Highway Department in co-operation with the regular legally constituted road authorities of the county in the maintenance of State highways, and the State Highway Department and the legally constituted road authorities of all counties shall co-operate with each other in the expenditure of this fund as provided in Chapter 100 of the Public Acts of Tennessee 1915; *Provided*, that said fund shall be deposited as the State and county highway fund and shall be drawn out only on vouchers signed by the Chairman of the State Highway Department and the Secretary for road work in the county where collected as herein provided; *Provided, further*, that the County Courts of counties shall direct the expenditure of all of this fund when the State department fails to do so by May 1st of each year, and the State Highway Commission shall in that case pay to each county its share as said county expends it as directed by the legally constituted road authorities of the county.

SEC. 8. *Be it further enacted*, That every dealer or other person selling an automobile, auto truck, motorcycle or other motor vehicle, either new or second hand to any person in the State of Tennessee, shall within

three days from date of sale, notify the State Department of Highways through the County Court Clerk of said sale, giving the name and address of purchaser, make, horse power, and number of motor vehicle.

SEC. 9. *Be it further enacted*, That any person who fails or refuses to notify the State Department of Highways through the County Court Clerk of the sale of any motor vehicle as provided in Section 8 of this Act, or any person who fails or refuses to apply for registration or transfer of certificate as provided by this Act, or any person or persons, firm or corporations, who fails or refuses to give the correct rated horse power and motor number of any automobile, motor truck, motorcycle, or other vehicle of like character, or who fails or refuses to give the correct rated tonnage capacity of any motor truck whether freight or passenger or who violates any provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction, shall be fined not less than five ($5.00) dollars nor more than fifty ($50.00) dollars together with all costs of said prosecution, such fines to be turned over to the State Treasurer to be placed to the credit of the county in which such offense occurs, for the State Department of Highways to be expended as provided for other revenue obtained under this Act, and it shall be the duty of all peace officers in the State of Tennessee to arrest and prosecute violators of this Act before the proper legal tribunal; and all grand juries are hereby given inquisitorial powers as to the enforcement of this Act.

SEC. 10. *Be it further enacted*, That if any clause, section or part of this Act shall be held invalid or un-

constitutional for any reason, this shall not invalidate other portions of this Act.

SEC. 11. *Be it further enacted*, That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed, and that this Act take effect on the twenty-third day of April, 1917, the public welfare requiring it.

Passed April 5, 1917.

CLYDE SHROPSHIRE,
Speaker of the House of Representatives.

W. R. CRABTREE,
Speaker of the Senate.

Approved April 7, 1917.

TOM C. RYE,
Governor.

ACTS 1917, CHAPTER 74, PAGE 217.

SENATE BILL NO. 232.

(By Messrs. Mathews, Johnson, Creswell, Haston, Nichols, and Jarvis.)

AN ACT to provide revenue for use in road building in this State by the State Highway Department, acting in conjunction with the Secretary of Agriculture of the United States and in conformity to an Act of the Sixty-Fourth Congress approved July 11, 1916, entitled, "An Act to provide that the United States shall aid the States in the construction of rural post roads, and for other purposes"; to provide for the expenditure of all funds raised by the State of Tennessee to supplement said Federal appropriation and other funds raised under this Act; to confer upon the State Highway Department certain powers with respect to the distribution and expenditure of said entire fund, and to impose certain duties and place certain restrictions upon said State Highway Department with respect thereto and to provide the means and instrumentalities for laying out and carrying on the work of road building in this State, as contemplated by said Federal statute; and to penalize violations of this Act.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That there is hereby levied upon all taxable property in the State of Tennessee for the year 1917, and annually thereafter, a road tax of one mill on each dollar, said fund to be known as the State Aid Road Fund, and to constitute a separate fund from all other State, County or District road funds in this State. This tax shall be collected, as other taxes are now collected, by the County trustee of the various counties in this State, and reported quarterly to the State Highway Department, herein-

after called the Department, and to the Comptroller of Tennessee, and remitted quarterly to the Treasurer of the State of Tennessee. These reports and remittances shall be made on or before the first Monday in January, April, July and October of each year.

Said funds shall be kept separate and apart from all other funds and no part shall be diverted to any other branch of the State Government and shall be drawn out of the Treasury on the vouchers of the Secretary of the Department and the State Highway Engineer. The County Trustee shall receive one-half of one per cent for collecting said fund, except in counties where trustees are paid salaries, in which counties no charge shall be made for collections.

SEC. 2. *Be it further enacted*, That so much of the fund raised under Section 1 of this Act, as may be necessary, shall be used in building and maintaining roads and bridges in this State, under the direction of the Department and in conformity with the rules and regulations now or hereafter made by the Secretary of Agriculture of the United States, hereinafter called Secretary of Agriculture, under the power and authority conferred upon him by the Act of Congress of the United States, approved July 11, 1916, styled as in the caption of this Act. And the remainder of the fund raised under Section 1 of this Act shall be used in assisting the various counties of the State of Tennessee in the construction, reconstruction and maintenance of roads and bridges to be known as State Aid Roads, and for the administration of the fund. Said system of State Aid Roads, shall be composed of the designated system of State Highways. The State Highway Engineer and Secretary of the Department shall each enter into bond with good and solvent surety in the sum

of Twenty-five Thousand ($25,000.00) Dollars, and each of the other members of the Department in the sum of Ten Thousand Dollars ($10,000.00) conditioned upon the faithful performance of their duties as such officers. These bonds shall be approved by the Comptroller of the State, the Governor and State Treasurer, and filed as records of the office of the Comptroller.

SEC. 3. *Be it further enacted*, That the Department is hereby authorized and empowered to employ all such clerical assistance as may be necessary to keep accurate and complete records of all funds and of all business transactions of every kind and character with which said Department is connected. The Department is also authorized and empowered to employ such highway engineers or other experts in road building as they may deem necessary to the end that all the funds committed to their care and management shall be wisely and properly expended on the designated system of State Aid Roads of Tennessee. But such engineers, before entering upon the discharge of their duties shall have passed a satisfactory examination before the Dean of Engineering of the University of Tennessee, the State Geologist, and the State Highway Engineer; and shall give bond to the Department as described in Section 2 of this Act in such sum as may be required by them and each shall take an oath honestly, conscientiously, and with an eye single to the interest of the State, to discharge every duty which may devolve upon him. The records of the Department shall be open to the inspection of any tax payer of this State at all reasonable times. Full, complete detailed annual reports shall be made by the Secretary of the Department to the Commissioners and separate

ly to the Governor of Tennessee, on or before January 1st of each year hereafter. A like report, with such recommendations as may seem proper, shall be made by the State Highway Commission to the General Assembly at each regular session, within ten days after it convenes. The expenses of assistants, employees and engineers shall be paid out of the said State Aid Road fund; and there shall be set aside from this fund a sufficient amount to meet the necessary expenses of administration and engineering as required under the Act of Congress mentioned in the caption of this Act and in conformity with rules and regulations promulgated by the Secretary of Agriculture; but said amount thus set apart for said engineering, assistant engineering, clerical help and inspection shall in no event exceed five (5) per cent of said state fund collected under this Act.

SEC. 4. *Be it further enacted*, That it shall be the duty of the Department in improving the designated State Aid Roads or any part thereof in the period provided by the Act of Congress mentioned in the caption of this Act to apportion the funds, so far as possible, equitably among the various counties, *provided*, that within the period above mentioned, the Department shall aid each of the ninety-six (96) counties of the State of co-operation either with Federal and State funds or with State funds; *provided further*, that within the said period, the amount derived from either State, Federal, or State and Federal funds combined expended in each county by the Department shall not be less than Twenty-five Thousand ($25,000.00) Dollars. *Provided*, that in the event the total assessable valuation of property for the State should be increased in an amount over the assessment for the year 1917, it shall then be the duty of the Department to ex-

pend the excess as collected under this Act so as to give each county 1/96 part of the total increase of the State.

This entire fund, Federal and State, shall be expended on the road or roads designated by the Department in each county, as hereinafter provided. Before receiving the benefit of this Act, every county, through its County Court, by proper order, shall give to the Department a sufficient guaranty that the county will comply with the requirements of this Act, and that it will annually thereafter levy a tax sufficient for the proper maintenance of the roads constructed under the provisions of this Act, as may be required by the Department; *provided*, that the Department, in its discretion, may take over all or any part of said roads for maintenance with any maintenance funds at the disposal of the Department. The road or roads in each county shall be designated and contracts let within two years after the passage of this Act.

SEC. 5. *Be it further enacted*, That the Department shall have full power and authority, and it is hereby made its duty through its Highway Engineers or otherwise to designate a system of State Highways to designate the road or roads to be constructed, repaired or maintained by the use of the funds mentioned in this Act, and to lay out and locate all such roads. The Department is hereby further authorized in its own name or in the name of the county to condemn all necessary rights of way, gravel beds, stone or other material necessary or useful in building or repairing the roads contemplated by this Act, and in so doing may bring and prosecute all necessary condemnation suits. The State Attorney-General and District Attorney-General in each case shall act as attorneys for the Department without additional compensation.

All judgments rendered and other expenses necessarily incurred in such condemnation proceedings shall be paid out of the general funds of the county, in which the expenses are incurred and standing to the credit of the Trustee, on the warrant or voucher of the County Judge or Chairman drawn under the direction of the Secretary of the Department.

No cash bond sale be necessary in such suit. Injunction may be sought and obtained against all persons interfering in any way with the work of said Department or of any of its assistants or employees engaged in locating, laying out, or constructing any of said roads.

It shall be the duty of all the Chancellors and Trial Judges in this State to grant such injunctions and make all such other orders as will facilitate the work of the Department in locating and constructing roads hereunder, and they shall promptly hear all cases in which the Department may be interested.

SEC. 6. *Be it further enacted*, That the Department shall have full power and authority, in conformity with the rules and regulations made or to be made by the Secretary of Agriculture, or rules made or to be made by the Department to make all plans and specifications for the building of each particular road or bridge to be constructed under its direction, to make all contracts therefor, and to supervise and superintend the construction thereof.

It may make all needful rules and regulations, not inconsistent with this Act for the conduct and management of the business of the Department. All contracts under which any of this fund is to be expended shall be in writing duly signed by the State Highway Engineer and the Secretary of the Department. The

Department, before making contracts, must advertise for bids in some newspaper published in the county where the money is to be expended for at least four consecutive weeks, if there be such newspaper, otherwise by posters at the Court House thereof, and also once each week in one of the widely circulated daily newspapers in that grand division of the State where the work is to be done for at least two consecutive weeks, which notice shall be full and specific and shall enable the bidders to prepare their bids which must be sealed and filed with the Secretary of the Department or the authorized agent of the Department at a designated place on or before the time fixed in the notice. These bids must be accompanied by proper bonds or guaranty that proper bond will be executed. These sealed bids shall be opened in the presence of the bidders and public generally by the Secretary of the Department or the State Highway Engineer, or an authorized agent of the Department, and the bidder making the best and most advantageous offer shall be awarded the contract by the Department within ten days, upon complying with all requirements of the Department, the lowest bid to be accepted, if any, *provided* the requisite bond is given and contracts signed; *provided*, always that any and all bids may be rejected, at the discretion of the Department and shall be rejected if the best bid is not deemed reasonable and fair to the State. Oil contractors with whom contracts are made by the Department shall enter into good and solvent surety bond in an amount fixed by the Department, conditioned upon the full and faithful performance of every part and stipulation of the contract, especially the payment for all materials purchased and for all labor em-

ployed in the contemplated work. This bond must be approved by the Department and filed with its records. The contract shall provide that the work executed thereunder shall be subject to the inspection, approval, and acceptance of the State Highway Engineer or his assistant engineer acting on oath and under bond. Not more than ninety per cent of the contract price shall be paid on any contract until it is completed and the work is accepted. Before final acceptance, the contractor must furnish evidence to satify the Department that all the material used by him, his sub-contractors, or his agents, has been fully paid for and all laborers and other employees working for him, his sub-contractors, or his agents, have been fully paid. When this is done, full settlement may be made with the contractor; but not until thirty days' notice in some newspaper published in the county where the work is done, if there be a newspaper published there, and if not, in a newspaper in an adjoining county, that settlement is about to be made and notify all claimants to file notice of their claim with the Secretary of the Department. The Secretary of the Department shall withhold a sufficient sum from the contract price due to pay all claims, including advertising, of which notice is filed with him, for a reasonable time to allow claimants to sue for and prove their claims against the contractor or his agent, in some court of competent jurisdiction. *Provided*, that where satisfactory bids cannot be secured or where in the judgment of the department it is more feasible to execute any work by prison labor or free labor, authority is hereby given the Department to use prison labor, either State or County, or free labor and to purchase such equipment as may be necessary to carry on such work.

SEC. 7. *Be it further enacted,* That no contract shall be let to or made with any person, firm or corporation in which any member of the Department is interested, directly or indirectly, or with whom any member of the Department is knowingly related either by blood or marriage within the fourth degree, computing by the civil law. Nor shall any stockholder or other person in any way interested in such firm or corporation be related as aforesaid to any member of the Department. Neither shall any engineer in the employ of the Department have any interest in any contract or be knowingly related within the fourth degree to any person interested therein.

Any contract where such interest or relationship exists shall be utterly void.

SEC. 8. *Be it further enacted,* That it shall be a felony for any member of the Department, knowingly, to enter into any contract under the provisions of this Act with any person related to him or to any other member of the Department within the fourth degree, or to enter into any contract with any corporation in which he or any other member of the Department is interested directly or indirectly, or enter into any contract with any corporation in which any person knowingly related to him is interested directly or indirectly. It shall also be a felony for any officer or member of the Department, or for any person in their employ, to be guilty of any fraudulent act whatever in respect to the expenditure of the funds mentioned in this Act, among the various counties entitled thereto, or otherwise or in respect to the designation or laying out of any road, making plans and specifications therefor, advertising for bids, receiving same, letting or making contracts, approving or accepting roads, bridges,

etc., or otherwise in any way or manner whatsoever acting in bad faith in respect to any duty imposed upon any of said officials, o r engineers, or other employees, by this Act, or by so doing any act prohibited thereby, or failing wilfully to discharge any duty required hereby, whether any actual loss or damage shall result therefrom or not. Upon conviction thereof, such offender shall be punished by fine of not less than One Hundred ($100.00) Dollars, nor more than One Thousand Dollars ($1,000.00) or by imprisonment in the State penitentiary for not less than one (1) year nor more than (5) years, or both, at the discretion of the Court.

SEC. 9. *Be it further enacted,* That upon written notice from the Secretary of the Department to the State Treasurer and Comptroller that a project has been approved and estimated cost thereof specified, which notice shall operate as a temporary voucher on the Comptroller and Treasurer to protect them pending final settlement on the project as herein provided for. It shall be the duty of the Treasurer and Comptroller to place in some State depository in the county in which the project is located, and if none in said county then in a State depository in some adjoining county, an amount specified by the Secretary of the Department not less than one-fourth (1-4) of the total estimated cost of the project, which amount so placed shall be subject to the check or order of the Secretary for the purpose of carrying out the provisions of this Act; and it shall be the duty of the Secretary of the Department to present vouchers to the Comptroller covering all checks or orders issued against such fund monthly whereupon the Comptroller and Treasurer shall issue State warrants covering the

amount of such vouchers, which warrants shall be made payable to the State Highway Department and deposited in the depository from which the funds were withdrawn; said vouchers to be charged to the fund set aside for the specified project. All checks issued by the Secretary against such funds shall be protected by the seal of the Department of Highways pressed over the figures or written amount on each check and it shall be a felony for any person or persons to duplicate or attempt to duplicate the seal of said Department, or in any way alter, change or deface any such check and upon conviction shall be punishable by a fine of not less than One Hundred ($100.00) Dollars, and not more than Five Thousand ($5,000.00) Dollars, within the discretion of the Court, and be imprisoned in the State penitentiary for a term of not less than five (5) years nor more than ten (10) years. It shall be the further duty of the Secretary to provide a seal of the Department and register same as may be required by law. *Provided* that when any project shall have been completed under the provisions of this Act, it shall be the duty of the Secretary to furnish to the State Treasury and the County Judge or Chairman of the County Court a statement of the total cost of such project and to return to the Treasury and County Judge or Chairman any balance due the State or County. *Provided further*, that after final settlement shall have been made with the State Treasury upon any completed project, all cancelled checks shall be listed and securely kept in a fireproof vault by the Secretary for a period of six years after which time said checks shall there be deposited in the Archives of the State. The Department shall be checked and audited annually by the State Auditor and a copy of said audit filed with the

Secretary and Comptroller not later than December 31st, of each year.

SEC. 10. *Be it further enacted*, That nothing in this Act shall prevent the various counties in this State, or its individual citizens from so operating with the State Highway Department in the Construction, reconstruction, maintenance, or repair of the system of State Aid Roads by tax levy, bond issue, contribution, gift or otherwise.

SEC. 11. *Be it further enacted*, That the Comptroller and Treasurer shall anticipate the funds collected under this Act and issue short term notes, when so requested by the Department, to start the construction or reconstruction of any project that has been accepted by the Secretary of Agriculture, as provided in the said Act of Congress heretofore mentioned, and as provided for in this Act.

SEC. 12. *Be it further enacted*, That if any clause, section, or part of this Act shall be held invalid or unconstitutional for any reason, this shall not invalidate other portions of this Act.

SEC. 13. *Be it further enacted*, That all laws and parts of laws in conflict with this Act, be, and the same are, hereby repealed; and that this Act take effect from and after its passage, the public welfare requiring it.

Passed March 30, 1917.

W. R. CRABTREE,
Speaker of the Senate.

CLYDE SHROPSHIRE,
Speaker of the House of Representatives.

Approved April 3, 1917.

TOM C. RYE,
Governor.

ACTS 1919, CHAPTER 149, PAGE 546.

SENATE BILL NO. 442.

(By Mr. Stockard.)

A BILL to be entiled, An Act establishing a Highway Department, creating a State Highway Commission, prescribing the powers and duties of the State Highway Commission, providing for the designation and adoption of a State Highway Plan for the State, creating a Highway Fund, and providing for apportioning the proceeds thereof to the respective counties and applying the proceeds of the registration of motor, and electric vehicles, and acquiring rights of way therefor by exercising of the power of eminent domain, and providing for the appointment of the highway commissioners and fixing their compensation, to require the registration of automobiles, motorcycles, electric vehicles and other motor propelled vehicles; to require an annual registration of all such vehicles, to provide for a payment of a fee for all such registration, and to provide a penalty for violation of this Act; to provide for the payment of certain fees to the County Court Clerk of the various counties, and to empower certain county and State officials with the enforcement of this Act and for the expenditure of the funds collected by the provisions of this Act, and providing means and ways for the enforcement of this Act and repealing Chapter 100 of the Public Acts of 1915, entitled, "A Bill to be entitled, an Act establishing a Highway Department, creating a State Highway Commission, prescribing the powers and duties of the State Highway Commission, providing for the designation and adoption of a State Highway Plan of the State, creating a Highway Fund, and apportioning the proceeds thereof to the respective counties and the Highway Department, and applying the proceeds of the registration of motor vehicles,

amending Section 6 of Senate Bill 296, Chapter 8 of the Acts of the 59th General Assembly, and acquiring rights of way therefor, by exercising of the power of eminent domain," and to repeal all other laws in conflict with same.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That there is hereby created a State Highway Department, to be composed of three persons who shall be residents of Tennessee who shall be elected or chosen by the Secretary of State, State Comptroller and State Treasurer, by and with the consent of the Governor, not more than two of whom shall be members of same political party, one from each grand division of the state. Said Highway Commissioners shall serve for a term of six years, or until their successors are elected and qualified; *provided, However,* that the first Commissioners chosen under this Act serve for a period of two, four and six years respectively, and that biennially thereafter one commissioner shall be chosen who shall serve for a term of six years; and shall receive a salary of four thousand ($4,000.00) dollars per annum, payable monthly upon vouchers issued by the Chairman and Secretary of the State Highway Department, out of any funds to the credit of such Department. They shall also be paid actual expenses when away from office in Nashville. Commissioners may be removed for sufficient cause by the Secretary of State, State Treasurer and State Comptroller. Said Commissioners shall devote their entire time to the duties of the Highway Department. Each member of said Commission shall qualify by taking an oath to perform his duty faithfully, impartially, and for the best interest of the State. He shall also be required to give a good and solvent bond

in the sum of twenty-five thousand ($25,000.00) dollars, approved by the Governor, for the faithful performance of his duty for the prompt accounting of all moneys, said bond to be filed with the Secretary of State before entering upon their respective duties. A majority of the members of the Commission shall constitute a quorum for the transaction of business.

SEC. 2. *Be it further enacted,* That the Commission shall have its office at or near the Capitol and shall organize by electing from among its members the Chairman who will hold office for a period of four years from the time of the taking effect of this Act or until his successor is elected and qualified, and by the election of one of their number as Secretary, to be known as Secretary of the State Highway Department and who shall hold office for a term of four years. The Chairman shall have power to call meetings of the Board whenever it may be deemed expedient. Meetings shall be likewise held upon request of either member of the Commission. *Provided,* that all automobile license tax now on hand shall be returned to the counties from which it was collected and shall be expended by such counties in maintaining or building roads. This tax shall be expended by the Road or Pike Road authorities of such counties and shall be returned by the State to the County Court Clerk of such counties.

SEC. 3. *Be it further enacted,* That the Secretary of the State Highway Department shall give his entire time to the duties of his office. The Commission shall appoint such assistants and clerical help for the Department as they may deem necessary.

SEC. 4. *Be it further enacted,* That the State Highway Department shall be provided with suitable of-

fices in the City of Nashville near the Capitol. Said office shall be under the charge of the State Highway Commission, and shall be kept open at all times for business and for convenience of the public, and shall be the depository for all records for the State Highway Department.

SEC. 5. *Be it further enacted*, That it shall be the duty of the State Highway Commission to hold meetings at such times and for such periods as they may deem advisable for the proper carrying out of the provisions of this Act, and it shall be the duty of the Commission to consider and determine at such meetings all questions relating to the general policy of the Department of Highways and the conduct of the work in general.

SEC. 6. *Be it further enacted*, That the Secretary of the State Highway Department shall have charge of all records of the Department, shall keep a book of records of all proceedings and orders pertaining to the business of the Department and shall keep on file copies of all plans, specifications and estimates prepared by the Department. The Commission shall cause to be made and kept by this Department blue prints and maps showing a general highway plan of the State, such plan to consist of the main traveled roads, as will when improved, show and provide a connected system of improved highway throughout the State, and collect information and statistics with reference to the mileage, character and condition of highways and bridges in the different counties of the State and shall investigate and determine the method of road construction best adapted to the various sections of the State, and shall establish standards for the con-

struction and maintenance of highways in the various counties, giving due regard to topography, natural conditions, availability of road material, prevailing traffic conditions, and ways and means of the counties to meet their portion of the cost of building and maintaining roads under the provisions of this Act. The Commission may at all times be consulted by the county and district officers having authority over highways and bridges and in like manner call on such county and district officials for information relative to highways and bridges within their county or district, in order to determine the character and have the general supervision of the construction, repair and maintenance of all roads improved under the provisions of this Act.

SEC. 7. *Be it further enacted*, That the State Highway Commission is given the power to proceed to designate main traveled roads with a view of connecting all county seats, and also to designate other main traveled roads, which are deemed of sufficient importance to be included in the general highway plan of the State and receive for their construction and improvement financial aid under the provisions of this Act.

SEC. 8. *Be it further enacted*, That all counties of the State desiring to participate in the expenditure of the funds of the State Highway Department, which shall comply with the requirements of the law and the rules and regulations of the State Highway Commission, shall have the right to participate in said fund and be aided in the construction or reconstruction of roads and bridges therein and the maintenance thereof, if in the discretion of the State Highway Commission the same it deemed advisable.

SEC. 9. *Be it further enacted*, That whenever the said State Highway Commission finds it necessary or advisable it shall have the power to alter the course or grade or otherwise improve any road selected, adopted, or accepted for Federal or State aid and take over and improve as a State Highway. The counties wherein such roads lie shall have and are given the authority to acquire for the benefit of the State rights of way therefor, either by donations by owners of the land through which said highways shall run, or by agreement between such owners and the county, or by the exercise of the power of eminent domain which is hereby expressly conferred upon such counties. *Provided, however*, if the county authorities through which said road is designated do not act immediately upon request of the said State Highway Commission for the procurement and furnishing of said rights of way, that there is hereby expressly given to said State Highway Commission the right to condemn by eminent domain all rights of way for said roads, all bluffs, gravel pits, and any and all other road material found necessary or advisable to be used by said State Highway Commission. *Provided, further*, that the said Highway Commission is authorized and empowered immediately upon the filing of the petition for condemnation of said rights of way and road material to take possession of the said designated right of way, road material and other property sought to be condemned.

SEC. 10. *Be it further enacted*, That all money accruing from the registration or licensing of automobiles in the State, under any law now in existence, or that may hereafter be enacted, over and above the necessary expense incident to the collection of same, and all penalties paid for the violation of such laws,

which are paid to the State Treasury, are hereby appropriated and are set aside as highway funds and shall be available for the purposes of this Act, and expended under the direction of the State Highway Commission for the construction or reconstruction and for the maintenance of public roads and bridges in the respective counties of the State.

SEC. 11. *Be it further enacted*, That the State Highway Commission may execute any highway work or part thereof, under this Act by means of the labor of State or county convicts, *Provided*, that such convicts at the time shall be available by law and satisfactory arrangements can be made by which they may be used. When such work is executed by means of labor of State convicts, the State Highway Commission shall pay for such labor on such highway work according to rules and regulations prescribed by law and the State authorities, who may furnish such convicts, and if the convicts so used are county convicts, the county authorities controlling such convicts shall receive pay for same at the price to be agreed upon by the State Highway Commissioners and the respective county officials authorized to furnish such labor. *Provided, further*, that in case said State Highway Commission is not able to make satisfactory arrangements to construct said highways with State or county convict labor or by contract with other parties, then the said Highway Commission is hereby authorized and empowered to build and construct said highways either on force account by contract or in such manner as is deemed advisable by said Commission.

SEC. 12. *Be it further enacted*, That said State Highway Commission shall have full power and law-

ful authority to make any and all necessary and proper arrangements, contracts and agreements, to receive aid and assistance from the Federal Government in constructing, reconstructing and maintaining roads and bridges, provided for and contemplated in this Act. All contracts and agreements in this respect shall be approved by the Attorney General of the State, as herein provided.

SEC. 13. *Be it further enacted*, That the word "road" or "highway" when used in this Act shall be construed to include all bridges upon, or which form a part of the road a highway to be constructed, reconstructed or maintained under the provisions of this Act.

SEC. 14. *Be it further enacted*, That all checks, vouchers or warrants drawn or given for the payment of any and all expense pertaining to the State Highway Department shall be signed by the Chairman of the Highway Commission and countersigned by the Secretary, and that all traveling expenses incurred by the Commissioners and their employes in the discharge of their duties must be itemized and sworn to before payment can be made.

SEC. 15. *Be it further enacted*, That before the owner of any automobile, motorcycle, auto truck, electric automobile, or truck or other vehicle of like character used for the purpose of conveying persons or freight or for any other purpose, whether such vehicle is propelled by steam, gasoline, or electricity or any other mechanical power, shall operate or be permitted to operate upon any street, road, highway or any other public thoroughfare in Tennessee, such owner shall register such vehicle with the State Highway

Department through the County Court Clerk in the county in which the owner resides, giving the motor serial number, rated horsepower, tonnage capacity of motor trucks and make of same, together with the name and residence of such owner, and shall pay the following fees: for all motor trucks, freight or passenger, fifty cents per rated horsepower of motor so operated as rated by the Society of Automobile Engineers, and an additional fee of five ($5.00) dollars per ton for each ton carrying capacity (factory rating); for automobiles, motorcycles, or other vehicles of like character, fifty cents per rated horsepower of the motor so operated as rated by the Society of Automobile Engineers; and electric automobiles or trucks, twenty-five ($25.00) dollars each, and five ($5.00) dollars ton carrying capacity (factory rating), and shall receive from the State Highway Department a certificate showing such registration on an automobile, motorcycle, auto truck, electric automobile or truck, or other vehicle of like character, under this Section. After the first day of September of any year the applicants shall be required to pay but one-half the registration fee herein provided for: *Provided, however,* that owners of regularly licensed vehicles registered in any State or territory in the United States, Canada or Mexico may have the privilege of operating upon the public roads of Tennessee for a period of not exceeding thirty days. *Provided, further,* that upon sworn statement from the head of any Department of the State or Federal Government, or the County Judge or the Chairman of the County Court of any county, or the Mayor of any town or city that the vehicle for which application is made for registration is actually owned and operated exclusively for the State, county,

city or Federal Government, the State Highway Department, through the County Court Clerk, shall issue a license, and number plate, as above provided, except that no charge shall be made for the same by the State, but the County Court Clerk shall have the right to collect the fee of fifty cents for registration, which shall be fixed as full compensation to said clerk in lieu of all compensation fixed herein or in other statutes, but in all such cases the application must be accompanied by a sworn statement as above provided and the County Court Clerk shall not issue any number plate until special authority is obtained from the State Highway Commission. *Provided, however*, that the fifty-cent horsepower shall not apply to the year 1919.

SEC. 16. *Be it further enacted*, That whenever the ownership of such vehicle shall become changed by sale or otherwise, the registration number shall remain upon such vehicle as a part thereof until such registration expires by law, but the purchaser thereof shall be required to notify the State Highway Department through the County Court Clerk of such transfer and receive a transfer certificate in his name, for which he shall pay a fee of one dollar. He shall be required to register such certificate with the County Court Clerk of the county in which he resides and pay therefor a fee of twenty-five cents and the registration shall not be considered completed until said registration with the County Court Clerk is made.

SEC. 17. *Be it further enacted*, That the owner of such vehicle is hereby required to display in a conspicuous manner, at both the front and rear of such vehicle, a number plate of size, color, dimensions and character as the State Highway Commission may des-

ignate. The number plate shall show in addition to the registration number of such machine, the year and the abbreviation of Tennessee. *Provided*, further, that the State Highway Department through the County Court Clerk shall furnish, without additional cost to the owner of such machine, a set of two number plates, and owners are required to use these number plates on their machines, and no other State number plates shall be used.

SEC. 18. *Be it further enacted*, That all dealers in or manufacturers of motor vehicles, motorcycles, auto trucks, electric automobile or truck, or like vehicle shall instead of registering each motor vehicle, motorcycle, auto truck, electric automobile or truck, or like vehicle owned by him, make application to and receive from the State Highway Commission through the County Court Clerk a general distinguishing number or mark. This certificate and number shall be of a different color and number from that of any other owner of a motor vehicle, motorcycle, auto truck, electric automobile or truck, or like vehicle as described in Section 15 of this Act, and shall be known as a demonstration license, and the same number shall be used by said dealer or manufacturer only while such vehicle is actually being demonstrated to a customer or prospective purchaser. Motor vehicles, motorcycles, auto trucks, electric automobiles or trucks, or like vehicles used in service of the manufacturer, sales agent or dealer, must be provided with regular license number plate and pay therefor the fee set forth in Section 15 of this Act, and shall not at any time use or display the special or demonstration number plate while in the service of the owner, agent or dealer other than for demonstration as aforesaid. Said dealer or manufac-

turer shall register with and pay to the State Highway Commission through the County Court Clerk for such special demonstration number the sum of twenty-five ($25.00) dollars. This registration shall be renewed annually as other registrations and the annual registration fee shall be twenty-five ($25.00) dollars, and the owner shall register same with the County Court Clerk and pay a fee of fifty cents; *Provided* the duplicate demonstration number plates in series may be issued upon application to the State Highway Commission through the County Court Clerk at a cost of fifty cents each.

SEC. 19. *Be it further enacted,* That each owner of a motor vehicle, motorcycle, auto truck, electric automobile or truck, or like vehicle shall annually hereafter on or before the first day of January of each year make application to the State Highway Commission through the County Court Clerk for annual registration, giving the same information and paying the same fee as required in an original registration including registration with the County Court Clerk, and upon payment of such fees shall receive from the State Highway Commission through the County Court Clerk a certificate showing such registration, and shall also receive a set of two number plates, on which shall, in addition to the registration number, have the year and the abbreviation of Tennessee.

SEC. 20. *Be it further enacted,* That it shall be the duty of the County Court Clerk of each County to enforce the provisions of this Act and in so doing he shall:

(a) Ascertain the names of the owners of all wheeled vehicles included in Section 15 of this Act,

in his county, and to issue distress warrants against the owner operating any such vehicle in violation of the provisions of this Act after February 1 of the year for which the tax in question may be due in case of the issuance of such distress warrant such clerk shall be entitled to collect fees now provided by law for the issuance of distress warrants.

(b) Take registration applications from the owner of any vehicle designated in this Act.

(c) Collect the fees provided for in this Act.

(d) Distribute the number plates provided by the State Highway Commission and keep a complete record in his office, for the benefit of the general public, of all such vehicles registered in his county.

(e) Remit and report on the first day of each month to the State Highway Department all moneys at that time on hand collected by him under the provisions of this Act.

(f) Account to the State Highway Commission for all number plates so consigned to him.

(g) Collect from the owner making application for the registration of a vehicle required to be registered under the provisions of this Act a fee of fifty cents, which shall be his compensation in full.

If any County Court Clerk shall be delinquent as much as ten days in making the report hereinabove required to be made he shall be guilty of a misdemeanor and on conviction thereof shall be fined not less than ten dollars nor more than fifty dollars.

SEC. 21. *Be it further enacted*, That the said State Highway Commission on or before the 15th day of each month shall report and remit to the State Comptroller all moneys received by them from the County

Court Clerks as provided under this Act or from any and all other purposes.

All of the funds derived under this Act shall be used by said State Highway Commission in the maintenance of said department and in carrying out the provisions of this Act relating to the construction and maintenance of said highways in the several counties of the State. *Provided, however*, that the net funds realized from the taxes and privileges collected under this Act which shall be distributed among all the counties of this State in the following manner and proportions:

Half of the net funds derived by virtue of the auto tax levied in this Bill shall be distributed equally among all of the counties of the State, the other and remaining half of said net funds shall be expended upon such State Highways as may be designated by the said State Highway Commission so as to secure as far as practicable the construction and maintenance of other routes or main lines of State Highways.

The State Highway Commission shall also have the right to designate the roads in the several counties in which the fund to be distributed to the counties as herein provided shall be expended, the character of roads to be constructed, and the manner in which the expenditure for construction or maintenance shall be made. Nothing in this Act shall be construed as changing or modifying the provisions of Chapter 74 of the Public Acts of 1917, the same being entitled "An Act to provide Revenue for use in Road Building in the State by the State Highway Department acting in conjunction with the Secretary of Agriculture of the United States and in conformity to an Act of the 64th Congress, approved July 11, 1916, entitled An Act to provide that the United States shall aid

the States in the construction of rural post roads and for other purposes; to provide for the expenditure of all funds raised by the State of Tennessee, to supplement said Federal Appropriation and other funds raised under this Act, to confer upon the State Highway Department certain powers with respect to the distribution and expenditure of said entire funds, and to impose certain duties and place certain restrictions upon said State Highway Department with respect thereto and to provide the means and instrumentalities for laying out and carrying on the work of road building in this State as contemplated by said Federal Statute; and to penalize violations of this Act," and it is hereby declared to be the intent of Legislature that the funds collected under the provisions of said Chapter 74, shall be distributed and used as therein directed.

The books of said Commission and the Secretary thereof shall be audited by the State Auditor as other departments are audited, or as often as may be required by the Governor.

SEC. 22. *Be it further enacted*, That the said State Highway Commission shall have the power within its reasonable discretion to require of any county where a road or roads are to be built to contribute its fair proportion of the funds necessary to construct said highway, but in no case more than 50 per cent shall be required.

Provided further, however, that nothing in this Section shall be so construed as to interfere with the distribution hereinbefore made among the several counties of the State of the revenue raised by taxes and privileges levied under this Act.

SEC. 23. *Be it further enacted*, That every dealer

or other person selling an automobile, auto truck, motorcycle, electric automobile or truck, or other motor vehicle, either new or second-hand, to any person in the State of Tennessee, shall within three days from date of sale notify the County Court Clerk of said sale, giving the name and address of purchaser, make, horsepower and number of motor vehicle.

SEC. 24. *Be it further enacted,* That any person who fails or refuses to notify the County Court Clerk of the sale of any motor vehicle or electric automobile or truck, as provided in Section 23 of this Act, or any person who fails or refuses to apply for registration or transfer of certificate as provided by this Act, or any person or persons, firm or corporations, who fails or refuses to give the correct rated horsepower and motor number of any automobile, motor truck, motorcycle, electric automobile or truck, or any like vehicle, or who fails or refuses to give the correct rated tonnage capacity of any motor or electric truck, whether freight or passenger, or who violates any provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction shall be fined not less than five dollars nor more than fifty dollars, together with all costs of said prosecution, such fines to be turned over to the State Treasurer to be placed to the credit of the State Highway Commission to be expended as provided for other revenue obtained under this Act, and it shall be the duty of all peace officers of the State of Tennessee to arrest and prosecute violators of this Act before the legal tribunal; and the judges of the several circuit and criminal courts shall be required to give this Act in charge to the grand juries and all grand juries are hereby given inquisitorial powers as to the enforcement of this Act.

SEC. 25. *Be it further enacted,* That each section and every part thereof of this Act is hereby declared to be separate and independent from all other sections thereof and the invalidity of any section or part thereof shall not be held to affect the validity of the remaining sections, as such sections would have been passed and enacted by the General Assembly, if the invalid sections or parts thereof, if any, had not been incorporated in this Act. *Provided, further,* that nothing in this Act shall be construed to conflict with the Act known as "Federal Aid Act," Chapter 74 of the Public Acts of 1917, providing for the co-operation with the Federal Government in the construction of roads and bridges.

SEC. 26. *Be it further enacted,* That Chapter 100 of the Public Acts of 1915, entitled "An Act establishing a Highway Department, creating a State Highway Commission, prescribing the powers and duties of the State Highway Commission, providing for the designation and adoption of a State Highway Plan, creating a highway fund and apportioning the proceeds thereof to the respective counties and the Highway Department, and applying the proceeds of the registration of motor vehicles (amending Section 6 of Senate Bill 296, Chapter 8, of the Acts of the Fifty-ninth General Assembly), and acquiring rights of way therefor, by exercising of the power of eminent domain," is hereby repealed and all offices and departments created and established thereby are hereby abolished and all the duties, powers and authority vested by said Act and all other existing laws, in the State Highway Commission created under and by authority of the said Chapter 100 of the Public Acts of 1915 are hereby expressly vested in the State Highway Commis-

sion created and provided for herein. But all unexecuted contracts for road building made under said Act shall be carried out by the State Highway Commission hereunder. *Provided, further,* that the present State Highway Commission shall turn over promptly all money, contracts, papers, maps and other records, etc., in their possession to the Highway Commission created under the provisions of this Act. That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed, and that this Act take effect on the 21st day of April, 1919, the public welfare requiring it.

Passed April 15, 1919.

ANDREW L. TODD,
Speaker of the Senate.

SETH M. WALKER,
Speaker of the House of Representatives.

Approved April 16, 1919.

A. H. ROBERTS,
Governor.

ACTS 1923, CHAPTER 58, PAGE 150

HOUSE BILL NO. 525

(By Mr. Hall.)

AN ACT requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the busines in this State of selling gasoline and distillate in this State, to pay the State Comptroller a privilege tax, for engaging in and carrying on such business in this State, equal to two cents per gallon of such gasoline and distillate, to be in addition to all other taxes, such fund to be used solely in the construction and maintenance of a highway system in the State.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That as used in this Act the term "person" means and includes every individual, firm, association, joint stock company, syndicate and corporation.

The term "distributor" means and includes every person who engages in the business in the State of refining, manufacturing, producing or compounding gasoline or distillate, and selling the same in this State; and also every person who engages in the business in this State of shipping, transporting or importing any gasoline or distillate into, and making original sales of the same, in this State.

The term "dealer" means and includes every person, other than a distributor, who engages in the business in this State, of distributing or selling gasoline or distillate within this State.

SEC. 2. *Be it further enacted,* That every distributor, shall for the year 1923, and each year thereafter,

when engaged in such business in this State, pay to the State Comptroller, for the exclusive use of the State, a special privilege tax, in addition to all other taxes, for engaging in and carrying on such business in this State, in an amount equal to two cents for each gallon of gasoline and two cents for each gallon of distillate refined, manufactured, produced, or compounded by such distributor and sold by him in this State, or shipped, transported or imported by such distributor into, and distributed or sold by him within this State, during such year; *provided, however,* that no gasoline or distillate distributed or sold by any such distributor in the original packages in which the same was shipped, transported or imported into this State, shall be included or considered in determining the amount of such privilege tax, but only such gasoline and distillate as has been sold or distributed by such distributor, after the breaking of the original packages in which the same was shipped, transported or imported into this State shall be included or considered in computing the amount of the privilege tax to be paid by such distributor; *provided further,* that all gasoline and distillate distributed by any distributor to any of its service stations in this State shall be deemed to have been sold, and shall be treated in the same manner as though the same had been sold to dealers or other persons.

SEC. 3. *Be it further enacted,* That every dealer shall for the year 1923, and each year thereafter, when engaged in such business in this State, pay to the State Comptroller, for the exclusive use of the State, a special privilege tax, in addition to all other taxes, for engaging in such business in this State, equal to two cents for each gallon of gasoline and two cents for

each gallon of distillate sold or distributed by such dealer in this State during such year. *Provided, however*, that no gasoline or distillate sold or distributed by such dealer, and which was refined, manufactured, produced or compounded and sold by a distributor in this State, and no gasoline or distillate sold by such dealer which, when purchased by him, other than was contained in containers or packages in which the same was shipped, transported or imported into this State, shall be included or considered in determining the amount of such privilege tax to be paid by such dealer, but only such gasoline and distillate as was shipped, transported or imported into this State, and purchased by such dealer in the original packages in which so shipped, transported or imported into this State, and then resold by such dealer after the breaking of such original packages by him, shall be included or considered for the purpose of computing the amount of such privilege tax.

SEC. 4. *Be it further enacted*, That such tax shall be paid in quarterly installments for the quarters ending, respectively, March 31st, June 0th, September 30th and December 31st, in each year, beginning with the quarter ending June 30, 1923, and the amount of such privilege tax becoming due for each quarter shall be paid to the State Comptroller within thirty days after the end of the quarter for which the same is due.

SEC. 5. *Be it further enacted*, That each distributor shall keep a record in such form as the Commissioner of Finance and Taxation shall require, showing the total number of gallons of gasoline and distillate refined, manufactured, produced or compounded and sold by such distributor within this State during each

quarter; or showing the total number of gallons of gasoline and distillate shipped, transported, or imported into this State by such distributor; the number of gallons thereof sold in this State in the original packages in which shipped, transported, or imported into this State; the number of gallons thereof sold in this State by such distributor, after breaking the original packages in which the same was shipped, transported or imported into this State.

Each dealer shall keep a like record showing the total number of gallons of gasoline and distillate sold by him; the number of gallons of gasoline and distillate so purchased, contained in the original container or packages in which the same was shipped, transported or imported into this State; the number of gallons so purchased, refined, manufactured, produced or compounded and sold in this State, and such other information as the Commissioner of Finance and Taxation may require. All such records shall at all times during the business hours of the day be subject to inspection by the Commissioner of Finance and Taxation, his agents or employes.

SEC. 6. *Be it further enacted*, That each and every distributor must, within thirty (30) days after the quarter ending June 30, 1923, and within thirty (30) days after the end of each following quarter, make out, in duplicate, on forms prescribed by the Commissioner of Finance and Taxation, and deliver to the State Comptroller a statement showing the total number of gallons of gasoline and distillate refined, manufactured or compounded and sold by him within this State, or, the total number of gallons of gasoline or distillate shipped, transported or imported into this State by such distributor during such quarter; the

number of gallons sold in the original package in which shipped; gallons sold in containers or packages other than the original packages in which the same was shipped, transported or imported into this State, and such other information as the Commissioner of Finance and Taxation may require; and the total amount due to the State of Tennessee as privilege taxes for such quarter.

Each and every dealer must within thirty (30) days after the quarter ending June 30, 1923, and within thirty (30) days after the ending of each following quarter, make out in duplicate, on forms prescribed by the Commissioner of Finance and Taxation, and deliver to the State Comptroller a statement showing the total number of gallons of gasoline and distillate sold by such dealer during the quarter, which was purchased by him in the original package in which the same was shipped, transported or imported into this State; and the total amount due to the State of Tennessee as privilege taxes for such quarter. Such statement shall be signed and verified by the oath of the individual, or individuals, or by the president, vice-president, treasurer, assistant treasurer, or managing agent in this State of the joint stock company, association, syndicate or corporation making the same.

Any distributor or dealer engaged in or carrying on his business at more than one place or location in this State, may include all such places of business and location in one statement.

The Comptroller shall file one of such statements in his office and shall deliver the duplicate copy thereof to the Commissioner of Finance and Taxation.

SEC. 7. *Be it further enacted,* That each distributor and each dealer must, within thirty (30) days aft-

er the end of each such quarter, and at the same time the statement required by Section 6 of this Act is delivered to the State Comptroller, pay to the State Comptroller, the amount of the privilege tax shown by such statement to be due for the quarter for which the statement is made and filed.

SEC. 8. *Be it further enacted,* That it shall be unlawful for any distributor or dealer to fail, neglect or refuse to make and file any statement required by the provisions of Section 6 of this Act, in the manner, or within the time herein provided, or to make any such statement false in any particular.

SEC. 9. *Be it further enacted,* That if any distributor or dealer shall fail, neglect, or refuse to make any statement required by Section 6 of this Act within the time herein provided, the Commissioner of Finance and Taxation shall, immediately after such time has expired, proceed to inform himself as best he may, regarding the matters and things required to be set forth in such statement, and from such information as he may be able to obtain, to make a statement showing such matters and things, and determine and fix the amount of the privilege tax due the State from the delinquent distributor or dealer for such quarter, adding to t he amount of each privilege tax a penalty of not exceeding fifty per cent (50%) thereof, and deliver such statement to the State Comptroller, who shall proceed to collect the amount of such privilege tax with penalty added thereto, and interest on the whole thereof, at the rate of six (6))per centum per annum from the date of the making of such statement by the Commissioner of Finance and Taxation until paid. Upon request of the State Comptroller it shall be the

duty of the Attorney-General to commence and prosecute to final determination, in any court of competent jurisdiction, an action at law to collect the same. No action shall be maintained by any such distributor or dealer to review, revise or change such statement in any particular, or to enjoin the collection of the privilege tax, or any part thereof, and such distributor or dealer shall have no right to pay such privilege tax, or any part thereof, under protest, and maintain any action to recover the same.

SEC. 10. *Be it further enacted*, That every distributor selling any gasoline or distillate in this State, in the original packages in which shipped, transported or imported into this State by such distributor, shall at the time of making such sale, make out and deliver to the purchaser thereof, an invoice, in which invoice shall be stated the number of gallons of gasoline or distillate covered by such invoice, and that the same has been sold in the original packages in which the same was shipped, transported or imported into this state.

SEC. 11. *Be it further enacted*, That none of the provisions of this Act shall apply to the sales of gasoline or distillate when sold for, and exported out of the State.

SEC. 12. *Be it further enacted*, That it shall be the duty of the State Comptroller to collect all taxes accruing under this Act and to issue proper receipts therefor and to pay over all taxes so collected to the State Treasurer, who shall place them to the credit of a fund to be used solely in the construction and maintenance of the Highway System of the State, and no part of said fund shall be used in any other department or for any other purpose whatsoever.

SEC. 13. *Be it further enacted,* That all laws and parts of laws in conflict with this Act be, and the same are hereby repealed, and that this Act take effect on April 1, 1923, the public welfare requiring it.

Passed March 14, 1923.

F. S. HALL,
Speaker of the House of Representatives.

EUGENE J. BRYAN,
Speaker of the Senate.

Approved March 24, 1923.

AUSTIN PEAY,
Governor.

ACTS 1925, CHAPTER 4, PAGE 8

HOUSE BILL NO. 216.

(By Messrs. Bratton, Willet and McKnight.)

AN ACT to amend Chapter 58 of the Public Acts of the General Assembly of the State of Tennessee for the year 1923, being an Act entitled, "An Act requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the business in this State of selling gasoline and distillate in this State, to pay the State Comptroller a privilege tax, for engaging in and carrying on such business in this State, equal to two cents per gallon of such gasoline and distillate, to be in addition to all other taxes, such fund to be used solely in the construction and maintenance of a highway system in the State," so as to provide a tax of three cents for each gallon of gasoline or distillate.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That Chapter 58 of the Public Acts of the General Assembly of the State of Tennessee for the year 1923 be, and the same is hereby amended so that the phrase "two cents for each gallon" wherever the same appears in Sections 2 and 3 of said Act shall be stricken out, and in lieu thereof there shall be inserted the phrase "three cents for each gallon."

SEC. 2. *Be it further enacted,* That this Act take

effect February 9th, 1925, the public welfare requiring it.

Passed January 28, 1925.

W. F. BARRY,
Speaker of the House of Representatives.

L. D. HILL,
Speaker of the Senate.

Approved February 2, 1925.

AUSTIN PEAY,
Governor.

ACTS 1925, CHAPTER 72, PAGE 161

SENATE BILL NO. 744.

(By Mr. Maiden.)

AN ACT authorizing the funding board of the State to borrow in the name of the State, not exceeding five million dollars to supplement the revenues and to be used by the Department of Highways and Public Works in the construction of highways and bridges.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a Funding Board of the State of Tennessee, to be composed of the Governor, Comptroller of the Treasury, Treasurer of the State and Secretary of State, be, and it is hereby authorized and empowered to borrow money from time to time and execute the State's interest-bearing obligations therefor, pledging the full faith and credit of the State for the payment of the principal and interest thereon, to such amount as said Board may deem proper, not to exceed, however, in the aggregate, the sum of Five Millions of Dollars, the proceeds to be used in the construction of highways and bridges, in the Department of Highways and Public Works. Said obligation shall be in such form, bear such rate of interest, not exceeding six per cent per annum, mature serially or all at one time, and in such denominations, and payable in such place or places, as said Board may deem proper; *Provided*, not more than Two Million Five Hundred Thousand Dollars of said obligations shall be issued in any one year, and shall not be sold at less than their par value.

SEC. 2. *Be it further enacted*, That said obligations may be issued from time to time, as the interest of the Department of Highways and Public Works may, in the opinion of the Governor and Commissioner of Highways and Public Works, require; the interest thereon shall be paid quarterly, semi-annually, or annually; may be renewed from time to time, maturing, however, not later than five years from the date this Act becomes a law; shall be free from taxes of all kinds in the State of Tennessee; shall be signed by the Governor and attested by the Secretary of State, under the great seal of the State, shall be described and a record kept in the Minutes of the Funding Board as the same or any part thereof shall be issued, sold or renewed; and the proceeds shall be available for the Department of Highways and Public Works in the same manner as other funds in the Treasury are available for that Department.

SEC. 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 8, 1925.

L. D. HILL,
Speaker of the Senate.

W. F. BARRY,
Speaker of the House of Representatives.

Approved April 13, 1925.

AUSTIN PEAY,
Governor.

ACTS 1927, CHAPTER 1, PAGE 1

SENATE BILL NO. 1.

(By Messrs. Shelton, Wiggs, Bramley and Bratton.)

A BILL to be entitled "An Act to provide for the building by the Department of Highways and Public Works of certain bridges over rivers in the State of Tennessee on the State Highway system, and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridges, and to provide for the collection of tolls from such bridges and the amortization therefrom of said notes and bonds."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* The Department of Highways and Public Works of the State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directer, and empowered to locate, design and cause to be built and put in operation bridges on the State Highway System at crossings on the following designated highways and streams:

1. Over the Tennessee River, on State Highway No. 2, between Lenoir City and Sweetwater, and approximately at Loudon.

2. Over the Tennessee River, on State Highway No. 1, between Waverly and Camden.

3. Over the Tennessee River, on State Highway No. 15, between Waynesboro and Selmer, and approximately at Savannah.

4. Over the Tennessee River, on State Highway No. 23, between Linden and Lexington, and near Perryville.

5. Over the Obion River, on State Highway No.

3, between Troy and Newbern, and approximately at Obion.

6. Over the Clinch River, on State Highway No. 66, between Rogersville and Sneedville, and approximately at Kyles Ford.

7. Over the Cumberland River ,on State Highway No. 25, at Carthage.

8. Over the Little Tennessee River, on State Highway No. 64, between Madisonville and Maryville, near Niles Ferry.

Contracts for the construction of all of said bridges shall be let within twelve months from the final passage of this Act.

SEC. 2. *Be it further enacted*, Since there is an existing toll bridge at the location of Bridge No. 7 (Carthage) hereinabove authorized, the Department is empowered, in lieu of building a bridge at that site, to purchase the existing bridge if in the opinion of the Commissioner of Highways and Public Works and of the Governor it is adequate to meet the public needs and if it can be purchased at a cost of not to exceed $60,000.00. If the existing bridge should thus be purchased it shall thereupon be operated as a toll bridge in the manner hereinafter provided, except that the tolls from this purchased bridge shall remain as now fixed and be kept in a separate fund, until the purchase price and the cost of its maintenance have out of such tolls been reimbursed to the Department, and it shall then become a free bridge and be thereafter maintained as a part of the State Highway System; *provided, however*, that, if the County of Smith should participate in the purchase of such bridge in a manner satisfactory to the said Commissioner and the Gover-

nor, the bridge shall then immediately upon its purchase be opened as a free bridge and be thereafter maintained as above provided. If the Department should purchase or contribute to the purchase of the existing bridge as herein provided, it shall pay for same out of its general funds otherwise provided and not out of the proceeds of the notes or bonds hereinafter authorized. The tolls at this bridge shall be as provided in Section 6 hereof, but if a new bridge is built so that the existing bridge is in competition with it, the Department shall have the right, with the approval of the Governor, to reduce (but not to increase) any of such tolls so as to conform with the tolls charged by the other bridge.

SEC. 3. *Be it further enacted*, the Department is authorized to fix the location of each of said bridges; and to make the necessary surveys, soundings and borings; and to determine the design of each bridge and make or procure the proper plans and drawings, excepting, however, that such bridges shall be of the standard design of said Department, and shall be in conformity with the laws of the United States and the requirements of the War Department.

SEC. 4. *Be it further enacted*, For the purpose of providing funds for the building of the bridges herein authorized the State Funding Board, composed of the Governor, the Comptroller, the Treasurer and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate the sum of $5,000,000, and to execute therefor the notes or bonds of the State signed by the

Governor and attested by the Secretary of State, and to pledge the full faith and credit of the State for the payment of the same, principal and interest. The tolls collected from said bridges as hereinafter provided shall be kept in a separate fund by the State Treasurer and are hereby specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same become due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful moneys of the United States and shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear interest at not to exceed five per cent per annum payable quarterly, semi-annually or annually, as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as that they may conveniently be retired out of the funds hereinabove specially pledged for their payment; provided, however, that in addition to the pledging of the tolls as herein above provided, the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether original or renewals.

SEC. 5. *Be it further enacted,* The proceeds of said notes or bonds shall be turned into the State Treasurer and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in

the manner prescribed by law, but solely for the purpose of the bridges herein authorized.

SEC. 6. *Be it further enacted*, As soon as any of the bridges herein authorized are put in operation the Department shall arrange for and supervise the collection of tolls for the use of said bridges, which shall be at the following rates, the bridges being identified by the numbers given them in Section 1 of this Act.

	Bridge Nos. 2, 3 and 4.	Bridge Nos. 1, 5, 6, 7, 8.
Automobile and driver	$ .50	$ .25
Person, each	.05	.05
Motor truck or motor bus (one ton capacity or under) and driver	.50	.25
Motor truck or motor bus (over one ton capacity) and driver	.100	.50
Automobile trailer	.25	.15
Motor truck trailer or motor bus trailer	.50	.25
Motorcycle and driver	.25	.15
One-horse vehicle, with draft animal, and driver	.15	.10
Two-horse vehicle and two draft animals, and driver	.25	.15
Extra draft animals or horses or mules, each	.05	.05
Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot, each	.02	.02
Circus animals, other than those specifically mentioned above, on foot, each	.25	.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls.

Commuters tickets for those making frequent use of a particular bridge may be sold at reduced rates

upon such terms and subject to such restrictions as may be approved by the Department.

SEC. 7. *Be it further enacted,* The toll-keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll-keepers shall keep such records and shall make accounting and settlement at such times and in such manner as the Commissioner of Finance and Taxation may prescribe, and a statistical record showing the number of tolls paid at each bridge and the source of them shall be kept by said Department; and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it at each bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account".

SEC. 8. *Be it further enacted,* The funds in the "Toll Bridge Account" shall be available to the Department of Highways and Public Works for the maintenance of the bridges constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized; and when the cost of all the bridges built under this Act has been repaid, all of said bridges shall immediately be opened by the Department as free bridges to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 9. *Be it further enacted,* The word "approaches" in this Act shall include such spans or ramps

and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of said Department may be necessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 10. *Be it further enacted*, The Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property including gravel pits or other road material, as may be necessary to carry out the purposes of this Act, and for that purpose to bring and prosecute all necessary condemnation suits; and the Attorney General and the District or County Attorney General in each case shall act as attorneys for the Department without additional compensation, and any judgments rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building such bridges. Furthermore, the Department shall have the right to take possession of any such property or road material immediately upon filing petition for its condemnation.

SEC. 11. *Be it further enacted*, The Department of Highways and Public Works is hereby authorized and empowered to build said bridges either by contract or on force account. All contracts entered into by the De-

partment of Highways and Public Works in connection with the building of these bridges shall be in writing and, except as herein otherwise provided shall be made and carried out in conformity with the provisions of Sections 6, 7 and 8 of Chapter 74 of the Acts of 1917, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 12. *Be it further enacted*, The Department of Highways and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridges, approaches and appurtenances and for the safety of the traveling public.

SEC. 13. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 19, 1927.

HENRY H. HORTON,
Speaker of the Senate.

SELDEN MAIDEN,
Speaker of the House of Representatives.

Approved January 20, 1927.

AUSTIN PEAY,
Governor.

ACTS 1927, CHAPTER NO. 6, PAGE 17

SENATE BILL NO. 83.

(By Messrs. Lewis, Fitzhugh, Harris, Bramley, Breazeale and Hensley.)

A BILL entitled, "An Act to provide for the building by the Department of Highways and Public Works of certain bridges over rivers in the State of Tennessee on the State Highway system, and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridges, and to provide for the collection of tolls from such bridges and the amortization therefrom of said notes and bonds."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* The Department of Highways and Public Works of the .State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directed and empowered to locate, design and cause to be built and put in operation bridges on the State Highway System at crossings on the following designated highways and streams:

9. Over the Cumberland River on State Highway No. 76, near Dover.

10. Over the Hiwassee River on State Highway No. 58, between Decatur and Georgetown.

11. Across the Clinch River, near Sneedville, on State Highway No. 66.

12. Over the Cumberland River on State Highway No. 52, at Celina.

13. Over the Tennessee River, at mouth of Sandy, on State Highway No. 76.

14. Over the Tennessee River at mouth of Clinch River, on State Highway No. 58, near Kingston.

Contracts for the construction of all said bridges shall be let not later than January 1, 1929.

SEC. 2. *Be it further enacted,* The Department is authorized to fix the location of each of said bridges; and to make the necessary surveys, soundings and borings; and to determine the design of each bridge and make or procure the proper plans and drawings, excepting, however, that such bridges shall be of standard design of said Department, and shall be in conformity with the laws of the United States and the requirements of the War Department.

SEC. 3. *Be it further enacted,* For the purposes of providing funds for the building of the bridges herein authorized the State Funding Board, composed of the Governor, the Comptroller, the Treasurer, and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate sum of $4,500,000.00 and to execute therefor the notes or bonds of the State signed by the Governor and attested by the Secretary of State and to pledge the full faith and credit of the State for the payment of the same, principal and interest. The tolls collected from said bridges as hereinafter provided shall be kept in a separate fund by the State Treasurer and are hereby specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same become due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful moneys of the United States and

shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear interest at not to exceed five per cent per annum payable quarterly, semi-annually, or annually as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as that they may conveniently be retired out of the funds hereinabove specially pledged for their payment; *provided, however,* that in addition to the pledging of the tolls as hereinabove provided the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether originals or renewals.

SEC. 4. *Be it further enacted,* The proceeds of said notes or bonds shall be turned into the State Treasury and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in the manner prescribed by law, but solely for the purpose of the bridges herein authorized.

SEC. 5. *Be it further enacted,* As soon as any other bridges herein authorized are put in operation the collection of tolls for the use of said bridges, which shall be at the following rates, the bridges being identified by the numbers given them in Section 1 of this Act:

	Bridge Nos. 9, 12, 13, 14.	Bridge Nos. 10, 11.
Automobile and driver	$ .50	$ .25
Person, each	.05	.05

Motor truck or motor bus (one ton capacity) or under, and driver	.50	.25
Motor truck or motor bus (over one ton capacity) and driver	1.00	.50
Automobile trailer	.25	.15
Motor truck trailer or motor bus trailer	.50	.25
Motorcycle and driver	.25	.15
One-horse vehicle with animal and driver	.15	.10
Two-horse vehicle and two draft animals and driver	.25	.15
Extra draft animals or horses or mules, each	.05	.05
Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot, each	.02	.02
Circus animals, other than those specifically mentioned above, on foot, each	.25	.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls, *provided further,* that commuters' tickets may be sold to frequent users of any bridge, at reduced rates and in accordance with rules and restrictions which the Department may prescribe.

SEC. 6. *Be it further enacted,* The toll-keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll-keepers shall keep such records and shall make accounting

and settlement at such times and in such manner as the Commissioner of Finance and Taxation may prescribe, and a statistical record showing the number of tolls paid at each bridge and the source of them shall be kept by said Department; and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it at each bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account."

SEC. 7. *Be it further enacted,* The funds in the "Toll Bridge Account" shall be available to the Department of Highways and Public Works for the maintenance of the bridges constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized, and when the cost of all of the bridges built under this Act has been repaid, all of said bridges shall immediately be opened by the Department as free bridges to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 8. *Be it further enacted,* The word "approaches" in this Act shall include such spans or ramp and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of

said Department may benecessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 9. *Be it further enacted,* The Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property, including gravel pits or other road material, as may be necessary to carry out the purposes of this Act, and for that purpose to bring and prosecute all necessary condemnation suits; and the Attorney General and the District or County Attorney General in each case shall act as attorneys for the Department without additional compensation, and any judgments rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building such bridges. Furthermore, the Department shall have the right to take possession of any such property or road material immediately upon filing petition for its condemnation.

SEC. 10. *Be it further enacted,* The Department of Highways and Public Works is hereby authorized and empowered to build said bridges either by contract or on force account. All contracts entered into by the Department of Highways and Public Works in connection with the building of these bridges shall be in writing and, except as herein otherwise provided, shall be made and carried out in conformity with the provisions of Sections 6, 7 and 8 of Chapter 74 of the Acts of 1917, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 11. *Be it further enacted,* The Department of Highways and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridges, approaches and appurtenances and for the safety of the traveling public.

SEC. 12. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed January 21, 1927.

HENRY H. HORTON,
Speaker of the Senate.

CHAS. H. LOVE,
Pro-tem Speaker of the House.

Approved February 4, 1927.

AUSTIN PEAY,
Governor.

ACTS 1927, CHAPTER NO. 37, PAGE 97

SENATE BILL NO. 634.

(By Messrs. Butler of Macon, Chambers, Graves, Hallberg, Hensley, Layne, McKnight, Remine and Wiggs.)

A BILL to be entitled, "An Act to provide for the building by the Department of Highways and Public Works of certain bridges over rivers in the State of Tennessee on the State Highway system, and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridges, and to provide for the collection of tolls from such bridges and the amortization therefrom of said notes and bonds."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* The Department of Highways and Public Works of the State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directed, and empowered to locate, design and cause to be built and put in operation bridges on the State Highway System at crossings on the following designated highways and streams:

15. Over Cumberland River on projected State Highway between Lebanon and Hartsville and Gallatin near Hunters Point.

16. Over the Tennessee River on State Highway between Knoxville and Maryville near the University of Tennessee, Agricultural Department.

17. Over the Tennessee River on State Highway No. 2 between Chattanooga and Jasper.

Contracts for the construction of all of said bridges shall be let within two years from the final passage of this Act.

SEC. 2. *Be it further enacted*, That Department is authorized to fix the location of each of said bridges; and to make the necessary surveys, soundings and borings; and to determine the design of each bridge and make or procure the proper plans and drawings, excepting however, that such bridges shall be of the standard design of said Department, and shall be in conformity with the laws of the United States and the requirements of the War Department.

SEC. 3. *Be it further enacted*, For the purpose of providing funds for the building of the bridges herein authorized the State Funding Board, composed of the Governor, the Comptroller, the Treasurer and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate the sum of $2,000,000, and to execute therefor the notes or bonds of the State signed by the Governor and attested by the Secretary of State, and to pledge the full faith and credit of the State for the payment of the same, principal and interest. The tolls collected from said bridges as hereinafter provided shall be kept in a separate fund by the State Treasurer and are hereby specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same become due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful monies of the United States and shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear in-

terest at not to exceed five per cent per annum payable quarterly, semi-annually, or annually, as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as that they may conveniently be retired out of the funds hereinabove specially pledged for their payment; *provided*, however, that in addition to the pledging of the tolls as hereinabove provided the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether originals or renewals.

SEC. 4. *Be it further enacted*, That proceeds of said notes or bonds shall be turned into the State Treasury and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in the manner prescribed by law, but solely for the purpose of the bridges herein authorized.

SEC. 5. *Be it further enacted*, As soon as any of the bridges herein authorized are put in operation the Department shall arrange for and supervise the collection of tolls for the use of said bridges, which shall be at the following rates:

Automobile and driver	$ .50
Person, each	.05
Motor truck or motor bus (one ton capacity or under) and driver	.50
Motor truck or motor bus (over one ton capacity) and driver	1.00
Automobile trailer	.25
Motor truck trailer or motor bus trailer	.50
Motorcycle and driver	.25
One-horse vehicle, with draft animal and driver	.15

Two-horse vehicle and two draft animals and driver	.25
Extra draft animals or horses or mules, each	.05
Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot, each	.02
Circus animals, other than those specifically mentioned above, on foot, each	.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls.

Commuters' tickets for those making frequent use of a particular bridge may be sold at reduced rates upon such terms and subject to such restrictions as may be approved by the Department.

SEC. 6. *Be it further enacted*, The toll-keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll-keepers shall keep such records and shall make accounting and settlement at such times and in such manner as the Comissioner of Finance and Taxation may prescribe, and a statistical record showing the number of tolls paid at each bridge and the source of them shall be kept by said Department; and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it, at each bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account."

SEC. 7. *Be it further enacted*, The funds in the "Toll Bridge Account" shall be available to the Depart-

ment of Highways and Public Works for the maintenance of the bridges constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized; and when the cost of all of the bridges built under this Act has been repaid, all of said bridges shall immediately be opened by the Department as free bridges to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 8. *Be it further enacted*, That the word "approaches" in this Act shall include such spans or ramps and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of said Department may be necessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 9. *Be it further enacted*, The Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property, including gravel pits or other road material, as may be necessary to carry out the purposes of this Act, and for that pur-

pose to bring and prosecute all necessary condemnation suits; and the Attorney General and the District- or County Attorney General in each case shall act as attorneys for the Department without additional compensation, and any judgments rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building such bridges. Furthermore, the Department shall have the right to take possession of any such property or road material immediately upon filing petition for its condemnation.

SEC. 10. *Be it further enacted*, The Department of Highways and Public Works is hereby authorized and empowered to build said bridges either by contract or on force account. All contracts entered into by the Department of Highways and Public Works in connection with the building of these bridges shall be in writing and, except as herein otherwise provided, shall be made and carried out in conformity with the provisions of Sections 6, 7 and 8 of Chapter 74 of the Acts of 1917, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 11. *Be it further enacted*, The Department of Highways and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridges, approaches and appurtenances and for the safety of the traveling public.

SEC. 12. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 21, 1927.

HENRY H. HORTON,
Speaker of the Senate.

SELDEN MAIDEN,
Speaker of the House of Representatives.

Approved April 22, 1927.

AUSTIN PEAY,
Governor.

ACTS 1927, CHAPTER NO. 83, PAGE 266

HOUSE BILL No. 583.

(By Messrs. Maiden, Bushart and Robinson.)

AN ACT authorizing the funding board of the State to borrow in the name of the State, not exceeding ten million dollars to supplement the revenues and to be used by the Department of Highways and Public Works in the construction of highways and bridges.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That a Funding Board of the State of Tennessee, to be composed of the Governor, Comptroller of the Treasury, Treasurer of the State and Secretary of State, be and it is hereby authorized and empowered to borrow money from time to time and execute the State's interest-bearing obligations therefor, pledging the full faith and credit of the State for the payment of the principal and interest thereon, to such amount as said Board may deem proper, not to exceed, however, in the aggregate, the sum of Ten Millions of Dollars, the proceeds to be used in the construction of highways and bridges, in the Department of Highways and Public Works. Said obligation shall be in such form, bear such rate of interest, not exceeding six per cent per annum, mature serially or all at one time, and in such denominations and payable in such place or places, as said Board may deem proper; provided, not more than Five Million Dollars of said obligations shall be issued in any one year, and shall not be sold at less than their par value.

SEC. 2. *Be it further enacted,* That said obligations may be issued from time to time, as the interest of the Department of Highways and Public Works may, in

the opinion of the Governor and Commissioner of Highways and Public Works, require; the interest thereon shall be paid quarterly, semi-annually, or annually; may be renewed from time to time, maturing, however, not later than five years from the date of this Act becomes a law; shall be free from taxes of all kinds in the State of Tennessee; shall be signed by the Governor and attested by the Secretary of State under the great seal of the State, shall be described and a record kept in the Minutes of the Funding Board as the same or any part thereof shall be issued, sold or renewed; and the proceeds shall be available for the Department of Highways and Public Works in the same manner as other funds in the Treasury are available for that Department.

SEC. 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 23, 1927.

SELDEN MAIDEN,
Speaker of the House of Representatives.

HENRY H. HORTON,
Speaker of the Senate.

Approved April 29, 1927.

AUSTIN PEAY,
Governor.

ACTS 1929, CHAPTER 5, PAGE 7

SENATE BILL NO. 12

(By Mr. Hall)

A BILL to be entitled, "An Act to provide for the building by the Department of Highways and Public Works of certain bridges over rivers in the State of Tennessee on the State Highway System, and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridges, and to provide for the collection of tolls from such bridges, and amortization therefrom of said notes and bonds."

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* The Department of Highways and Public Works of the State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directed, and empowered to locate, design and cause to be built and put in operation bridges on the State Highway System at crossings on the following designated highways and streams:

49. Over the Cumberland River on projected State Highway No. 49 between Charlotte and Ashland City near the mouth of Harpeth River between the Counties of Dickson and Cheatham.

Contract for the construction of said bridge shall be let within one year from the final passage of this Act.

SEC. 2. *Be it further enacted,* The Department is authorized to fix the location of said bridge and to make the necessary surveys, sounding and borings; and to determine the design of said bridge and make or procure the proper plans and drawings, excepting however, that such bridge shall be of the standard design of said Department, and shall be in conformity

with the laws of the United States and the requirements of the War Department.

SEC. 3. *Be it further enacted*, For the purpose of providing funds for the building of the bridge herein authorized for the State Funding Board, composed of the Governor, the Comptroller, the Treasurer and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate the sum of $600,000.00 and to execute therefor the notes or bonds of the State signed by the Governor and attested by the Secretary of State, and to pledge the full faith and credit of the State for the payment of the same, principal and interest. The tolls collected from said bridge as hereinafter provided shall be kept in a separate fund by the State Treasurer and are specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same become due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful moneys of the United States and shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear interest not to exceed five percent per annum payable quarterly, semi-annually, or annually as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as that they may conveniently be retired out of the funds hereinabove specially pledged for their payment; provided, how-

ever, that in addition to the pledging of the tolls as hereinabove provided the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether originals or renewals.

SEC. 4. *Be it further enacted,* The proceeds of said notes or bonds shall be turned into the State Treasury and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in the manner prescribed by law, but solely for the purpose of the bridge herein authorized.

SEC. 5. *Be it further enacted,* As soon as the bridge herein authorized is put in operation the Department shall arrange for and supervise the collection of tolls for the use of said bridge, which shall be at the following rates:

Automobile and driver	$0.50
Person, each	0.05
Motor truck or motor bus (one ton capacity or under) and driver	0.50
Motor truck or motor bus (over one ton capacity) and driver	1.00
Automobile and trailer	0.25
Motor truck trailer or motor bus trailer	0.50
Motorcycle and driver	0.25
One-horse vehicle, with draft animal, and driver	0.15
Two horse vehicle and two draft animals and driver	0.25
Extra draft animals or horses or mules, each	0.05

Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot, each	0.02
Circus animals, other than those specifically mentioned above, on foot, each	0.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls.

Commuters' tickets for those making frequent use of this particular bridge may be sold at reduced rates upon such terms and subject to such restrictions as may be approved by the Department.

SEC. 6. *Be it further enacted,* The toll-keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll-keeper shall keep such record and shall make accounting and settlement at such times and in such manner as the Commissioner of Finance and Taxation may prescribe, and a statistical record showing the number of tolls paid at such bridge and the source of them shall be kept by said Department; and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it at said bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account."

SEC. 7. *Be it further enacted,* The funds in the "Toll Bridge Account" shall be available to the Depart-

ment of Highways and Public Works for the maintenance of the bridge constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized; and when the cost of the bridge built under this Act has been repaid, said bridge shall immediately be opened by the Department as free bridge to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 8. *Be it further enacted*, That the word "approaches" in this Act include such spans or ramps and surfacing as may be necessary to afford proper and convenient access from a point of the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of said Department may be necessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 9. *Be it further enacted*, The Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property including gravel pits or other road material, as may be necessary to carry out the purposes of this Act, and for the purpose to bring and prosecute all necessary condem-

nation suits; and the Attorney-General and the District or County Attorney General in each case shall act as attorneys for the Department without additional compensation, and any judgments rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building said bridge. Furthermore, the Department shall have the right to take possession of any such property or road material immediately upon filing petition for its condemnation.

SEC. 10. *Be it further enacted*, The Department of Highways and Public Works is hereby authorized and empowered to build said bridge by either contract or on force account. All contracts entered into by the Department of Highways and Public Works in connection with the building of this bridge shall be in writing, and, except as herein otherwise provided, shall be made and carried out in conformity with the provisions of Sections 6, 7 and 8 of Chapter 74 of the Acts of 1917, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 11. *Be it further enacted*, The Department of Highways and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridge, approaches and appurtenances and for the safety of the traveling public.

SEC. 12. *Be it further enacted*, That this Act take

effect from and after its passage, the public welfare requiring it.

Passed February 1, 1929.

S. R. BRATTON,
Speaker of the Senate.

CHAS. H. LOVE,
Speaker of the House of Representatives.

Approved February 11, 1929.

HENRY H. HORTON,
Governor.

ACTS 1929, CHAPTER 11, PAGE 20

HOUSE BILL NO. 161

(By Messrs. Riley, Chamlee, Levine, Anderson of Putnam, and Hutchings)

AN ACT to repeal Chapter 4 of the Public Acts of the General Assembly of the State of Tennessee for the year 1925, and to amend Chapter 58 of the Public Acts of the General Assembly of the State of Tennessee for the year 1923, so as to provide a tax of five cents for each gallon of gasoline or distillate.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That Chapter 4 of the Public Acts of the General Assembly of the State of Tennessee for the year 1925, same being an Act entitled "An Act to amend Chapter 58 of the Public Acts of the General Assembly of the State of Tennessee for the year 1923, being an Act entitled, 'An Act requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the business in this State of selling gasoline and distillate in this state, to pay to the State Comptroller a privilege tax, for engaging in and carrying on such business in this State, equal to two cents per gallon of such gasoline and distillate, to be in addition to all other taxes, such fund to be used solely in the construction and maintenance of a highway system in the State', so as to provide a tax of three cents for each gallon of gasoline or distillate," be, and the same is hereby, repealed.

SEC. 2. *Be it further enacted*, That Chapter 58 of the Public Acts of the General Assembly of the State of Tennessee for the year 1923, same being An Act

entitled, "An Act requiring all persons, firms, associations, joint stock companies, syndicates and corporations engaged in or carrying on the business in this State of selling gasoline and distillate in this State, to pay to the State Comptroller a privilege tax, for engaging in and carrying on such business in this State, equal to two cents per gallon of such gasoline and distillate, to be in addition to all other taxes, such fund to be used solely in the construction and maintenance of a highway system in the State", be, and the same is hereby, amended by striking out the words or phrase "two cents for each gallon" wherever the same appears in Section 2 and 3 of said Act, and inserting in lieu thereof the words or phrase "five cents for each gallon."

SEC. 3. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed February 13, 1929.

CHAS. H. LOVE,
Speaker of the House of Representatives.

S. R. BRATTON,
Speaker of the Senate.

Approved February 16, 1929.

HENRY H. HORTON,
Governor.

ACTS 1929, CHAPTER 36, PAGE 65

HOUSE BILL NO. 351

(By Messrs. Priest and Love)

AN ACT authorizing the Funding Board of the State to hereafter borrow, in the name of the State, not exceeding twenty-five million dollars to supplement the revenues and to be used by the Department of Highways and Public Works in the construction of Highways and bridges.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a Funding Board of the State of Tennessee, to be composed of the Governor, Comptroller of the Treasury, Treasurer of the State and Secretary of State, be, and it is hereby, authorized and empowered to hereafter borrow money from time to time and execute the State's interest-bearing obligations therefor, pledging the full faith and credit of the State for the payment of the principal and interest thereon, to such amount as said Board may deem proper, not to exceed, however, in the aggregate, the sum of Twenty-five Millions of Dollars, the proceeds to be used by the Department of Highways and Public Works in the construction of highways and bridges. Said obligation shall be in such form, bear such rate of interest, not exceeding five and one-half per cent per annum, mature serially or all at one time, and in such demonimations and payable in such place, or places, as said Board may deem proper; *provided*, not more than Twelve Million, Five Hundred Thousand Dollars of said obligations shall be issued in any one year, and shall not be sold at less than their par value, provided further that when the proceeds are derived from the sale of said notes, same shall be deposited in

the State Treasury and remain there until drawn out upon proper vouchers drawn and signed by the Commissioner of Highway and Public Works, as needed to meet the requirements of work on Highways under construction.

SEC. 1. *Be it further enacted,* That said obligations may be issued from time to time, as the interest of the Department of Highways and Public Works may, in the opinion of the Governor and the Commissioner of Highways and Public Works, require; the interest thereon shall be paid quarterly, semi-annually or annually; may be renewed from time to time, maturing, however, not later than ten years from the date this Act becomes a law; shall be free from taxes of all kinds in the State of Tennessee; shall be signed by the Governor and attested by the Secretary of State, under the great seal of the State; shall be described and a record kept in the minutes of the Funding Board as the same or any part thereof shall be issued, sold or renewed; and the proceeds shall be available for the Department of Highways and Public Works in the same manner as other funds in the Treasury are available for that Department.

SEC. 3 *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed February 22, 1929.

CHAS. H. LOVE,
Speaker of the House of Representatives.

S. R. BRATTON,
Speaker of the Senate.

Approved February 22, 1929.

HENRY H. HORTON,
Governor.

ACTS 1929, CHAPTER 104, PAGE 323

SENATE BILL NO. 471

(By Mr. Durham)

AN ACT to provide for the building by the Department of Highways and Public Works of a bridge over the Cumberland River in the State of Tennessee on the State Highway System and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridge, and to provide for the collection of tolls from such bridge and the amortization therefrom of said notes and bonds.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Department of Highways and Public Works of the State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directed and empowered to locate, design and cause to be built and put in operation a bridge on the State Highway System at a crossing on the following designated highway and stream:

20. Over the Cumberland River on projected State Highway from Gallatin to Murfreesboro, via La Gordo to a point on Highway No. 24 near Martha and on to Lebanon.

The contract for the construction of said bridge shall be let not later than two years after the passage of this Act.

SEC. 2. *Be it further enacted,* That the Department is authorized to fix the location of said bridge; and to make the necessary surveys, soundings and borings; and to determine the design of said bridge and make or procure the proper plans and drawings, ex-

cepting, however, that said bridge shall be of standard design of said Department, and shall be in conformity with the laws of the United States and the requirements of the War Department.

SEC. 3. *Be it further enacted*, That for the purpose of providing funds for the building of the bridge herein authorized the State Funding Board, composed of the Governor, the Comptroller, the Treasurer, and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate the sum of $500,000.00, and to execute therefor the notes or bonds of the State signed by the Governor and attested by the Secretary of State and to pledge the full faith and credit of the state for the payment of the same, principal and interest. The tolls collected from said bridge as hereinafter provided shall be kept in a separate fund by the State Treasurer and are hereby specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same become due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful moneys of the United States and shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear interest at not to exceed Five Per Cent per annum payable quarterly, semi-annually, or annually as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as may conveniently

be retired out of the funds hereinabove specially pledged for their payment; *provided, however*, that in addition to the pledging of the tolls as hereinabove provided the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether originals or renewals.

SEC. 4. *Be it further enacted*, That the proceeds of said notes or bonds shall be turned into the State Treasury and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in the manner prescribed by law, but solely for the purpose of the bridge herein authorized.

SEC. 5. *Be it further enacted*, That as soon as said bridge herein authorized is put in operation the collection of tolls for the use of said bridge shall be at the following rates:

Automobile and driver	$ .25
Person, each	.05
Motor truck or motor bus (one-ton capacity or under), and driver	.25
Motor truck or motor bus (over one-ton capacity) and driver	.50
Automobile trailer	.15
Motor truck trailer or motor bus trailer	.25
Motorcycle and driver	.15
One-horse vehicle with animal and driver	.10
Two-horse vehicle and two draft animals and driver	.15
Extra draft animals or horses or mules, each	.05
Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot each	.02
Circus animals, other than those specifically mentioned above, on foot, each	.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls, *provided further*, that commuters' tickets may be sold to frequent users of said bridge, at reduced rates and in accordance with rules and restrictions which the Department may prescribe.

SEC. 6. *Be it further enacted*, That the toll keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll keepers shall keep such records and shall make accounting and settlement at such times and in such manner as the Commissioner of Finance and Taxation may prescribe, and a statistical record showing the number of tolls paid at each bridge and the source of them shall be kept by said Department and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it at said bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account."

SEC. 7. *Be it further enacted*, That the funds in the "Toll Bridge Account" shall be available to the Department of Highways and Public Works for the maintenance of the bridge constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized, and when the

cost of said bridge built under this Act has been repaid, said bridge shall immediately be opened by the Department as a free bridge to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 8. *Be it further enacted*, That the word "approaches" in this Act shall include such spans or ramp and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of said Department may be necessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 9. *Be it further enacted*, That the Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property, including gravel pits or other road material, as may be necessary to carry out the purposes of this Act, and for that purpose to bring and prosecute all necessary condemnation suits; and the Attorney-General and the District or County Attorney-General in each case shall act as attorneys for the Department without additional compensation, and any judgments rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building such bridge. Furthermore, the Department shall have the right to take possession

of any such property or road material immediately upon filing petition for its condemnation.

SEC. 10. *Be it further enacted*, That the Department of Highways and Public Works is hereby authorized and empowered to build said bridge, either by contract or on force account. All contracts entered in by the Department of Highways and Public Works in connection with the building of these bridges shall be in writing and, except as herein otherwise provided, shall be made and carried out in conformity with the provisions of Section 6, 7, and 8 of Chapter 74 of the Acts of 1927, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 11. *Be it further enacted*, That the Department of Highways and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridge, approaches and appurtenances and for the safety of the traveling public.

SEC. 12. *Be it further enacted*, That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 11, 1929.

S. R. BRATTON,
Speaker of the Senate.

CHAS. H. LOVE,
Speaker of the House of Representatives.

Approved April 13, 1929.

HENRY H. HORTON,
Governor.

ACTS 1929, CHAPTER 112, PAGE 372

SENATE BILL NO. 486

(By Mr. Hensley)

AN ACT to provide for the building by the Department of Highways and Public Works of a bridge over the Cumberland River in the State of Tennessee on the State Highway System and to authorize the State to issue its notes or bonds for the purpose of procuring funds for the building and placing in operation of such bridge, and to provide for the collection of tolls from such bridge and the amortization therefrom of said notes and bonds.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Department of Highways and Public Works of the State of Tennessee (hereinafter referred to as the Department) is hereby authorized, directed and empowered to locate, design and cause to be built and put in operation a bridge on the State Highway System at a crossing on the following designated highway and stream:

21. Over the Cumberland River on State Highway No. 53 at or near Ft. Blount.

The contract for the construction of said bridge shall be let not later than two years after the passage of this Act.

SEC. 2. *Be it further enacted,* That the Department is authorized to fix the location of said bridge; and to make the necessary surveys, soundings and borings; and to determine the design of said bridge and make or procure the proper plans and drawings, excepting, however, that said bridge shall be of standard design

of said Department, and shall be in conformity with the laws of the United States and the requirements of the War Department.

SEC. 3. *Be it further enacted*, That for the purpose of providing funds for the building of the bridge herein authorized the State Funding Board, composed of the Governor, the Comptroller, the Treasurer and the Secretary of State, is hereby authorized to borrow money from time to time in such amounts as the Commissioner of Highways and Public Works may request, and as the Governor may approve, but not to exceed in the aggregate the sum of $250,000.00, and to execute therefor the notes or bonds of the State signed by the Governor and attested by the Secretary of State and to pledge the full faith and credit of the State for the payment of the same, principal and interest. The tolls collected from said bridge as hereinafter provided shall be kept in a separate fund by the State Treasurer and are hereby specially pledged for the payment and retirement of said notes or bonds, principal and interest, as the same becomes due until the whole of them shall be paid. The notes or bonds herein authorized shall be payable in lawful moneys of the United States and shall be in such form and denominations and be payable at such places as the Board may determine upon and shall be free from taxes of all kinds in the State of Tennessee. Such notes or bonds shall be negotiated on the best terms obtainable at not less than par and shall bear interest at not to exceed five per cent per annum payable quarterly, semi-annually, or annually as the Board may determine on, and may be renewed from time to time, and shall be made to mature at such times and in such amounts as may conveniently be retired out of the funds hereinabove specially

pledged for their payment; *provided, however,* that in addition to the pledging of the tolls as hereinabove provided the full faith and credit of the State shall at all times be and remain bound for the payment of all of said notes or bonds, whether originals or renewals.

SEC. 4. *Be it further enacted,* That the proceeds of said notes or bonds shall be turned into the State Treasury and shall be carried in a "Special Bridge Account" to the credit of the Department of Highways and Public Works and shall be subject to be drawn on by the Department of Highways and Public Works in the manner prescribed by law, but solely for the purpose of the bridge herein authorized.

SEC. 5. *Be it further enacted,* That as soon as said bridge herein authorized is put in operation and collection of tolls for the use of said bridge shall be at the following rates:

Automobile and driver	$ .25
Person, each	.05
Motor truck or motor bus (one-ton capacity) or under, and driver	.25
Motor truck or motor bus (over one-ton capacity) and driver	.50
Automobile trailer	.15
Motor truck trailer or motor bus trailer	.25
Motorcycle and driver	.15
One-horse vehicle with animal and driver	.10
Two-horse vehicle and two draft animals and driver	.15
Extra draft animals or horses or mules, each	.05
Cattle, sheep, hogs, or other domestic animals other than horses or mules, on foot, each	.02
Circus animals, other than those specifically mentioned above, on foot, each	.25

The toll rates shall be posted in a conspicuous place at each end of the bridge or its approaches and at the places of collecting the tolls, *provided further*, that commuters' tickets may be sold to frequent users of said bridge, at reduced rates and in accordance with rules and restrictions which the Department may prescribe.

SEC. 6. *Be it further enacted*, That the toll keepers shall be appointed and may be removed by the Commissioner of Finance and Taxation and shall execute bond for the faithful performance of their duties and for the due and proper accounting of all moneys received by them, such bonds to be made to the State of Tennessee in such amounts and with such sureties as said Commissioner may prescribe and approve. The toll keepers shall keep such records and shall make accounting and settlement at such times and in such manner as the Commissioner of Finance and Taxation may prescribe and a statistical record showing the number of tolls paid at each bridge and the source of them shall be kept by said Department; and on the tenth of each month the Department shall report and pay into the Treasury of the State all of the funds so derived by it at said bridge, and the Treasurer shall keep such aggregate funds in a separate "Toll Bridge Account."

SEC. 7. *Be it further enacted*, That the funds in the "Toll Bridge Account" shall be available to the Department of Highways and Public Works for the maintenance of the bridge constructed under this Act, and the residue shall from time to time be applied and paid out by the Funding Board for the retirement of the notes or bonds hereinabove authorized, and when the cost of said bridge built under this Act has been repaid, said bridge shall immediately be opened by the

Department as a free bridge to the traveling public and shall thereafter be maintained as a part of the State Highway System.

SEC. 8. *Be it further enacted*, That the word "approaches" in this Act shall include such spans or ramp and surfacing as may be necessary to afford proper and convenient access from a point on the natural ground level not below the high water elevation on one side of the stream to a like point on the other side and over such distance as in the opinion of the Department is necessary, consistent with good engineering practice, to permit of such access when the stream is at its highest stage. The word "appurtenances" in this Act shall include such necessary banisters, guardway, toll gate and house and safety signs as in the opinion of said Department may be necessary or proper for the protection of the traveling public and of public property and for the proper carrying out of this Act.

SEC. 9. *Be it further enacted*, That the Department of Highways and Public Works is authorized to acquire for the State by donation or in its own name to condemn by eminent domain such property, including gravel pits or other road material as may be necessary to carry out the purposes of this Act, and for that purpose to bring and prosecute all necessary condemnation suits; and the Attorney-General and the District or County Attorney-General in each case shall act as attorneys for the Department without additional compensation, and any judgment rendered or allowances agreed on by the Commissioner shall be paid as a part of the expenses of building such bridge. Furthermore, the Department shall have the right to take possession of any such property or road material immediately upon filing petition for its condemnation.

SEC. 10. *Be it further enacted,* That the Department of Highways and Public Works is hereby authorized and empowered to build said bridge, either by contract or on force account. All contracts entered in by the Department of Highways and Public Works in connection with the building of these bridges shall be in writing and, except as herein otherwise provided, shall be made and carried out in conformity with the provisions of Sections 6, 7, and 8 of Chapter 74 of the Acts of 1927, being the Act to provide revenue for use in road building in the State by the State Highway Department, and among other things to prescribe how contracts for road building shall be entered into by the State Highway Department.

SEC. 11. *Be it further enacted,* That the Department of Highway and Public Works shall make and enforce all such reasonable rules and regulations not inconsistent with the terms of this Act, as may in its opinion be proper and suitable for the protection of said bridge, approaches and appurtenances and for the safety of the traveling public.

SEC. 12. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed April 13, 1929.

S. R. BRATTON,
Speaker of the Senate.

CHAS. H. LOVE,
Speaker of the House of Representatives.

Approved April 13, 1929.

HENRY H. HORTON,
Governor.

ACTS 1929, EXTRA SESSION, CHAPTER 4, PAGE 4

HOUSE BILL NO. 38

(By Messrs. Priest, Riley, McWherter, Miles, Spencer, W. H. Robinson and W. Carter Warren)

AN ACT authorizing the Funding Board of the State to hereafter borrow, in the name of the State, not exceeding ten million dollars to supplement the revenues and to be used by the Department of Highways and Public Works in the construction of highways and bridges.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That a Funding Board of the State of Tennessee, to be composed of the Governor, Comptroller of the Treasury, Treasurer of the State, Secretary of State, and Commissioner of Finance and Taxation, be and it is hereby authorized and empowered to hereafter borrow money from time to time and execute the State's interest-bearing obligations therefor, pledging the full faith and credit of the State for the payment of the principal and interest thereon, to such amount as said Board may deem proper, not to exceed, however, in the aggregate, the sum of Ten Millions of Dollars, the proceeds to be used by the Department of Highways and Public Works in the construction of highways and bridges. Said obligations shall be in such form, bear such rate of interest, not exceeding five and one-half per cent per annum, mature serially or all at one time, and in such denominations and payable in such place or places, as said Board may deem proper; *provided*, said obligations shall not be sold at less than their par value, pro-

vided further that when the proceeds are derived from the sale of said obligations, same shall be deposited in the State Treasury and remain there until drawn out upon proper vouchers drawn and signed by the Commissioner of Highways and Public Works, as needed to meet the requirements of work on Highways under construction.

SEC. 2. *Be it further enacted,* That said obligations may be issued from time to time, as the interest of the Department of Highways and Public Works may, in the opinion of the Governor and the Commissioner of Highways and Public Works, require; the interest thereon shall be paid quarterly, semi-annually or annually; may be renewed from time to time, maturing, however, not later than ten years from the date this Act becomes a law; shall be free from taxes of all kinds in the State of Tennessee; shall be signed by the Governor and attested by the Secretary of State, under the great seal of the State; shall be described and a record kept in any minutes of the Funding Board as the same or any part thereof shall be issued, sold or renewed; and the proceeds shall be available for the Department of Highways and Public Works in the same manner as other funds in the Treasury are available for that Department.

SEC. 3. *Be it further enacted,* That the sum herein authorized to be borrowed and the obligations herein authorized to be issued shall be, and are, in addition to all sums authorized to be borrowed and all obligations authorized to be issued by the state, or by the Funding Board on behalf of the State, under any other Act of the General Assembly of the State of Tennessee.

SEC. 4. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Passed December 6, 1929.

CHAS. H. LOVE,
Speaker of the House of Representatives.

S. R. BRATTON,
Speaker of the Senate.

Approved December 11, 1929.

HENRY H. HORTON,
Governor.

APPENDIX B

ACTS OF 1927, CHAPTER 89, PAGE 283.

SENATE BILL NO. 589.

(By Sub-Committee of Finance, Ways and Means Committee of Both Houses.)

AN ACT entitled "An Act to provide for General Revenue for the State of Tennessee and the counties and municipalities thereof, to be known as the General Revenue Bill."

(All portions of this Act not deemed material are omitted from this publication and only that portion of Section 4 of the Act considered material to the present controversy is printed herewith).

SEC. 4. *Be it further enacted*, That each vocation, occupation and business hereinafter named in this section, is hereby declared to be a privilege, and the rate of taxes on such privileges shall be as hereinafter fixed, which privilege tax shall be paid to the County Court Clerk, as provided by law for the collection of such revenue.

AUTOMOBILE BUSSES, INCLUDING BUSSES OPERATING INTO AND/OR THROUGH OTHER COUNTIES

(State Privilege Tax Only).

For each automobile bus operating and carrying passengers on regular or fixed routes from one point in this State, to another point in this State, for which charge is made, there shall be paid to the County Court Clerk, in such County, in and from which it operates, or claims as its situs, the tax hereafter fixed, and said tax so paid shall be in lieu of all County and Municipal privilege taxes for such operation therein. The levy of any such

privilege tax by any County or Municipality on such busses is hereby prohibited.

The privilege tax hereby levied on such busses is as follows:

Each bus carrying 5 passengers or less, per annum	$ 50.00
Each bus carrying over 5 passengers and not more than 7 passengers, per annum	100.00
Each bus carrying over 7 passengers and less than 12 passengers, per annum	200.00
Each bus carrying 12 passengers and less than 18 passengers, per annum	350.00
Each bus carrying 18 passengers and less than 30 passengers, per annum	500.00
Each bus carrying 30 passengers or more, per annum	750.00

Provided, that the privilege tax accruing under this heading shall go and belong exclusively to the General fund of the State.

Provided Further, that where any automobile busses operate over one-half of their mileage or more over a county maintained road, that one-half of the above tax shall be retained by the county for county road purposes.

AUTOMOBILE BUSSES OPERATING EXCLUSIVELY IN ONE COUNTY.

Each person, firm or corporation operating an automobile bus and carrying passengers from one point in one county to another point in the same county on regular or fixed routes, shall pay the County Court Clerk in such county the following privilege tax:

Each bus carrying 5 passengers and less, per annum	$ 50.00

Each bus carrying over 5 passengers and not more than 10 passengers, per annum ----	100.00
Each bus carrying over 7 passengers and less than 15 passengers, per annum --------	200.00
Each bus carrying 15 passengers and less than 20 passengers, per annum----------	350.00
Each bus carrying 20 passengers and less than 30 passengers, per annum----------	500.00
Each bus carrying 30 passengers or more, per annum ----------	750.00

Provided, that this tax shall be in lieu of all county and municipal tax, except where said automobile busses operate on county highways, maintained by the county over a majority of the mileage, one-half of said tax shall be retained by the county for road purposes.

Provided, Further, that this section shall not apply to persons, firms or corporations who operate a car of not more than 5 passenger seating capacity on a route outside a city or town not exceeding five miles, nor persons, firms or corporations making not over two round trips per day with a car of not over 5 passenger seating capacity.

Provided Further, that the state privilege tax accruing under this heading shall go and belong exclusively to the General fund.

AUTOMOBILE BUSSES OPERATING UPON THE HIGHWAYS OF THIS STATE AND RUNNING INTO OTHER STATES, NOT LIABLE UNDER THE FOREGOING PROVISIONS.

(State Privilege Tax Only.)

Each person, firm or corporation operating an automobile bus carrying passengers upon

the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

Each bus carrying 5 passengers or less, per annum	$ 50.00
Each bus carrying over 5 passengers and not more than 10 passengers, per annum	100.00
Each bus carrying over 10 passengers and less than 15 passengers, per annum	200.00
Each bus carrying 15 passengers and less than 20 passengers, per annum	350.00
Each bus carrying over 20 passengers and less than 30 passengers, per annum	500.00
Each bus carrying over 30 passengers, per annum	750.00

Provided, that this tax shall be in lieu of all county and municipal taxes; Provided, further, privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State.

APPENDIX C.

CHAPTER 58, PAGE 108, PUBLIC ACTS 1929.

SENATE BILL No. 90.

By Bratton, Grubb, Candler and Bean.

AN ACT to provide for the regulation, supervision and control of persons, firms, corporations and associations, owning, controlling, operating or managing motor vehicles used for transporting persons or property for compensation on the public highways of this State; to provide for inspection, control and supervision fees; and to provide appropriate penalties and punishment.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That no person, firm, corporation, association, their lessees, trustees, or receivers, except when such requirement would be contrary to the Constitution or the laws of the United States or the Constitution of this State, shall operate any motor propelled vehicle (not usually operated on or over a rail or rails) for the transportation of persons or property for compensation on any public highway in any town, city, or county in this State, without having first obtained from the Railroad and Public Utilities Commission of the State of Tennessee a certificate declaring that the public convenience and necessity warrant such operation; and all such operators—to the full extent allowed by the Constitution and laws of the United States and the Constitution of this State—shall be subject to control, supervision, and regulation by the said Commission; *provided, however,* that nothing in this Act contained shall apply to motor vehicles while used exclusively for transporting persons to or from schools, Sunday schools, churches, religious services, of any kind, upon special pre-arranged excursions under the auspices of

any religious or charitable organization, or funerals, or while used exclusively for carrying persons and/or their baggage between railroad depots and any points in any city, town ,or suburbs thereof, in or adjacent to which such depot is located, or while used exclusively in ordinary taxicab or city transfer service. By "ordinary taxicab or city transfer service," as used in the above proviso and exception, is meant service performed by way of transporting any persons or property for hire between points in any one city, town, or the suburbs thereof ,and which is not performed over or along any definite, fixed, announced or advertised routes between any points in any such one city, town, or the suburbs thereof; but motor vehicles for which passengers are solicited and which are operated to and from points of interest or historic points in or near any city and which, therefore, perform the same service as a sightseeing bus, are not excepted from the provisions of this Act and the provisions of this Act shall apply to such motor vehicles thus operated, whether the same be called busses or for hire cars or called by any other name.

"Provided, further, that nothing in this Act shall prohibit a motor vehicle from making casual trips on call or under contract solicited by the party served, for the purpose of carrying passengers, provided that on said casual trips no one shall be allowed to pick up any passenger along the route, nor be permitted on the return trip to carry any passenger other than those included in the original trip; nor shall this Act or any provisions hereof affect or apply to persons, firms or corporations operating trucks or other motor vehicles for the sole purpose of transporting or delivering milk or milk products from the producer for

delivery to the purchaser from the producer, nor shall this Act or any provisions hereof affect or apply to persons not engaged in the business of transporting property or freight for compensation who may be called upon as private carriers to haul or transport freight or property when the regular carriers holding certificates of convenience and necessity cannot or will not furnish adequate means of transporting the same."

"Nothing in this Act shall apply to any motor vehicle used to convey perishable farm products, or live stock to market, the owner of which vehicle holds no certificate of Public Necessity and convenience and only operates such vehicle in cases of emergency. *Provided*, this Act shall not apply to carriers of either freight or passengers who make occasional trips.

SEC. 2. *Be it further enacted*, That said Railroad and Public Utilities Commission of the State of Tennessee is hereby empowered and directed, upon the filing of an application for such a certificate of public concenience and necessity, to ascertain and consider, after hearing, under such proper rules and regulations as it may promulgate, the service to be rendered and/or capable of being rendered by the applicant, the character of the highway or highways over which said applicant proposes to operate, and the effect thereon and upon the traveling public using the same; and it shall also take into consideration the facilities already in existence for the transportation of passengers, freight, merchandise, or other property along the proposed route, and between the termini and intermediate points upon said route, the public demand for, or need of the service proposed, and all other pertinent facts; and if said Commission shall find that the

convenience and necessity of the public warrant or will be promoted by granting such certificate, the same shall be issued accordingly, otherwise said Commission may deny the same; and said Commission may attach to the issuance of such certificate any and all such terms and conditions as may be for the public welfare, and which shall not be contrary to the Constitution or laws of the United States or the Constitution of this State; and said certificate shall be subject to such rules and regulations as the Commission may thereafter legally prescribe; *provided, however*, it is not intended by anything in this Act to give to said Commission any right or power to impose upon or exact from any such operator or applicant any general revenue tax or money charge of any nature.

SEC. 3. *Be it further enacted*, That such certificate of public convenience and necessity, when once issued, may be assigned or transferred, but no such certificate shall be so assigned or transferred without the approval of said Commission.

"Provided, that when any motor carrier holding a certificate of convenience and necessity sells his entire property and business for the purpose of having his operations continued by the purchaser, and the Commission approves the transfer of the seller's certificate of convenience and necessity, then there shall be paid to the State of Tennessee 25 per cent of the purchase price over and above the value of the physical properties and going value sold—the value of the physical properties and going value sold to be fixed by appraisal to be made by the Commission."

No motor vehicle shall be operated upon any such public highway in this State for the purpose of transporting passengers or property for hire by virtue of

such certificate until there shall have been filed with the Commission a bond, indemnity undertaking, or policy of insurance executed by a company, mutual association or reciprocal exchange legally authorized to execute such instruments in the State of Tennessee and approved by said Commission, in such reasonable amount and under such terms and conditions as said Commission may prescribe; and such bond, indemnity undertaking or policy of insurance shall be conditioned to pay any judgment rendered against such certificate holder and/or operator (within the limits of said bond, policy or undertaking) as the result of damage from personal injury or damage to property arising out of the actual operation of such vehicles, or for damage to or loss of property while in the possession of or under the control of any such operator in this State; and failure upon the part of the operator and/or certificate holder continuously to maintain such bond, policy or undertaking in force, shall subject such certificate to revocation.

SEC. 4. *Be it further enacted*, That the Commission shall promulgate such proper and legal rules and regulations as in its judgment may be necessary for the operation of such motor vehicles, and also shall supervise and control the service, rates, fares and charges, routes and safety of operation, of certificate holders and/or operators and their relationship with the traveling and shipping public, and determine, after notice and hearing, any complaints with respect thereto—all to the end that just, reasonable and non-discriminatory rates, fares and charges, and proper practices and safe operation may prevail; *provided, however*, nothing in this Act shall be construed as undertaking to give to said Commission the right to exercise any power or

make any order, the effect of which would be to transmute a private carrier in fact into a public carrier; and in the exercise of its power to regulate, supervise and control any and all holders of such certificates and/or such operators of motor vehicles, the regulation, supervision and control exercised by the Commission over any particular certificate holder or over any operator shall be only such as can be legally applied to any particular certificate holder or operator, whether such holder or operator be a private carrier or a common carrier, or whether such holder or operator be engaged exclusively in intrastate commerce or exclusively engaged in interstate commerce, or engaged in both intra and interstate commerce; and in each particular case and with respect to each particular certificate holder and/or operator the power and duty of the Commission, under this Act, to regulate, supervise and control shall never be exercised contrary to the Constitution or laws of the United States or the Constitution of this State.

SEC. 5. *Be it further enacted*, That at any time, by its order entered and after hearing had upon notice to the holder of any certificate and an opportunity given such holder to be heard, and when, at such hearing, it has been proved to the satisfaction of the Commission that such certificate holder has discontinued operation or has violated or refused or neglected to observe any of its proper orders, rules or regulations, said Commission may suspend, revoke, alter or amend any certificate issued by it; and said Commission is hereby authorized and empowered, under this Act, to do and to perform all proper or necessary things to carry out the purpose, intent, and provisions of this Act, whether herein specifically mentioned or not, and

to that end, after due notice, may hold hearings, or take or have taken for it the testimony of witnesses, at any place in the State of Tennessee which it may designate.

This Act shall not be construed in derogation of the common law, but shall be given a liberal construction, and any doubt as to the existence or extent of a power conferred by this Act shall be resolved in favor of the existence of the power, to the end that the Railroad and Public Utilities Commission of Tennessee may effectively govern and control the operation of motor vehicles used for transporting persons or property for compensation on the public highways of this State.

SEC. 6. *Be it further enacted,* That no present holder of any certificate of convenience and necessity heretofore issued by said Railroad and Public Utilities Commission of the State of Tennessee in respect of the operation of any motor propelled vehicle or vehicles for the transportation of persons or property for compensation on any public highways in this State, and now operating under such certificate, shall be required by this Act to apply for any new certificate in respect of such present operations by any such holder; and the right to conduct such present operations under such existing certificate by any such holder is hereby recognized and confirmed, subject to a continuing right and power of said Commission to deal with existing certificates and the operations of holders thereunder in the same way and manner and to the same extent that said Commission is hereby empowered to deal with all these things in respect of certificates of public convenience and necessity hereafter to be issued by said Commission and the operations of any and all holders thereof and thereunder.

SEC. 7. *Be it further enacted*, That on or before the 31st day of December of each year, each and every operator of any motor propelled vehicle or vehicles, subject to the control and jurisdiction of said Railroad and Public Utilities Commission of the State of Tennessee, shall pay to the State of Tennessee, at such times and in such installments as said Commission may require, a fee for the inspection, control and supervision of the business, service or acts of such operator, and such fee shall be paid by each such operator in addition to any and all property, franchise, license and other taxes, fees and charges now or hereafter fixed, assessed or charged by law against such operators. The amount of such fee so to be paid by each such operator shall be the sum of Two Dollars and Fifty Cents ($2.50) per annum, per passenger seat provided for passengers in each such vehicle, and the sum of Ten Dollars ($10.00) per annum per ton of carrying capacity provided for property in each vehicle. Said Commission, under rules promulgated or orders made by it, may require the payment in advance of the above fee from each such operator, or may require bond and security, satisfactory to said Commission, to secure such payment, if same be not required to be made in advance; and said Commission, under rules promulgated or orders made by it, shall have power to apportion the payment of such fee by any operator or operators for any proportionate part or parts of any year while such operation continues. In no case shall said fee to be paid by any such operator be less than Ten Dollars ($10.00), which shall be the minimum inspection, control and supervision fee to be paid by any operator subject to such fee for any year, or part thereof. It shall be the duty of the Comptroller to collect

said fees from said operators, as required by the rules and orders of said Commission, and to keep a separate account of the fees so collected, to be known as the "Motor Vehicle Account," the funds so raised to be segregated. Any funds remaining in said Motor Vehicle Account at the end of the year shall be carried over from year to year and expended only for the purposes specified in this Act. In case of default in the payment of any such fee, or part thereof, when same shall become due, any such operator in default shall be liable to a penalty of ten per cent (10%) per month, on the amount of the fee, which may be recovered by suit of the State, for every month it remains in default; and any such penalty, as well as all such fees, when collected, shall be covered into the State Treasury as a part of said Motor Vehicle Account, provided that out of any such penalty the Comptroller may employ and pay counsel, who shall have power to institute suit in any court of competent jurisdiction in this State for the recovery of any such delinquent fee and penalty, but, in no event, shall anything more than the penalty be allowed to such counsel for making such collections. A lien is hereby declared, and shall exist, upon all the property of each such operator coming within the provisions of this Act, for the payment of the fees prescribed by this Act, together with all penalties accruing hereunder, which lien shall be superior to all other liens, except, for Federal, State, County and Municipal taxes. The inspection, control and supervision fee provided to be paid by this Act shall be the only fee and charge to be paid by and collected from such operators to cover the expense of inspection, control and supervision. Said Railroad and Public Utilities Commission of the State of Tennessee is hereby

empowered to employ such rate experts, attorneys, accountants, auditors, inspectors, examiners, clerks, agents or other employees, and assign to them such duties as it may deem necessary to enable it fully to perform the duties, and to exercise the powers conferred by this Act upon said Commission. The compensation of any person employed under the authority of this Act shall be paid by the Commission, and paid from the fund in the "Motor Vehicle Account," but not otherwise, and said Commission shall not have the power to contract for any services, in connection with the administration of this Act, for which payment shall be made in any other way, or manner, by the State, or derived from any other source than the "Motor Vehicle Account," herein provided for. Any person or persons employed by said Commission under the authority herein given, may be assigned by said Commission to investigate, hear, and wherever possible, adjust any individual or general complaint made by any person against any such operator, wherein the investment, property, service or charges of any operator or claims preferred against any operator may be involved; and may hear and take proof, and in the event he is unable to effect a satisfactory adjustment of any such complaint, then it shall be his duty to certify the same to said Commission, with his recommendations in the premises, whereupon said Commission shall, after hearing, make its final order which shall be binding upon the parties to any such controversy.

SEC. 8. *Be it further enacted,* That insofar as same may be consistent with the terms and provisions of this Act, the Railroad and Public Utilities Commis- of the State of Tennessee, in respect of the regulation, supervision and control of the operators of motor ve-

hicles dealt with under this Act, shall have and possess all the power and authority now possessed by said Commission in regard to public utilities and carriers operating in this State, in addition to all the power and authority granted to said Commission by the terms and provisions of this Act.

SEC. 9. *Be it further enacted*, That any action, ruling or order taken, made or entered by said Railroad and Public Utilities Commission of the State of Tennessee in respect of the matters and things dealt with in this Act shall be subject to review by the courts of this State in the same way and manner, and subject to the same powers and conditions as now prevail in regard to the action, ruling and orders of said Commission relating to other public utilities operating in this State.

SEC. 10. *Be it further enacted*, That every officer, agent or employee of any corporation, or any other person who willfully and deliberately violates or fails to comply with, or who procures, aids or abets in the violation of the provisions of this Act, shall be guilty of a misdemeanor and upon conviction thereof for the first offense shall be punished by a fine of $50.00; for the second offense shall be punished by a fine of $100.00; for the third offense shall be punished by a fine of $500.00, or by imprisonment for a period not exceeding one year, or both; said fine and imprisonment at the discretion of the court. Each day any provision of this Act is so violated shall constitute a separate offense.

SEC. 11. *Be it further enacted*, That every officer, agent or employee of any corporation and every other person who fails to obey, observe or comply with any

order, decision, rule, regulation, direction, demand or requirement of said Railroad and Public Utilities Commission of the State of Tennessee made in pursuance of the power and authority conferred by this Act, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by fine of not exceeding Five Hundred ($500.00) Dollars, or by imprisonment for not exceeding one year, or by both fine and imprisonment. Each day any such order, decision, rule or regulation, etc., of said Commission is violated shall constitute a separate offense; and the fact that there may have been a prosecution for the violation of any such order, decision, rule or regulation, etc., of said Commission under this section shall not operate to prevent or limit the exercise of the authority of the Commission to suspend, revoke, alter or amend certificates as provided in this Act.

SEC. 12. *Be it further enacted*, That said Railroad and Public Utilities Commission of the State of Tennessee, or the Attorney-General of the State, in the name of the State and acting upon the request of said Commission, are hereby given the power and right by bill of complaint in any Chancery Court of this State having jurisdiction of the parties, to seek injunction relief, either prohibitory or mandatory, or both, to compel compliance by any offending parties with any of the provisions of this Act, or with any order, decision, rule, regulation, direction, demand or requirement made by said Commission in pursuance of this Act; and jurisdiction and power are hereby conferred and the duty is hereby imposed upon the several Chancery Courts of this State, in all proper cases, to declare, decree and award such injunctive relief.

SEC. 13. *Be it further enacted,* That neither this Act nor any provisions thereof shall apply or be construed to apply to commerce with foreign nations, or commerce among the several States of the United States, or business conducted for the United States Government, except insofar as the same may be permitted under the Constitution of the United States and the Acts of Congress.

SEC. 14. *Be it further enacted,* That the holding of any section or part thereof, or of any sub-section, sentence, clause, or phrase of this Act to be void or ineffective for any cause shall not affect any other section or part thereof of this Act. It is hereby declared that this Act and each section, sub-section, sentence, clause and phrase thereof would have been passed and enacted, irrespective of the fact that any one or more sections, sub-sections, sentences, clauses or phrases thereof be declared unconstitutional or void or ineffective for any cause. Be it further enacted that this Act shall not apply to automobiles, taxis and trucks for hire operating upon any Public Road in Tennessee upon and for which the Commission has not granted a certificate of Public Convenience and Necessity to any person, firm or corporation covering such road or roads. Provided further that this shall not prevent the Commission from hereafter issuing certificates of Necessity and Convenience over such road or roads.

SEC. 15. *Be it further enacted,* That this Act take effect from and after its passage, the public welfare requiring it.

Effective April 2, 1929.

APPENDIX D.

OPINION OF SUPREME COURT OF TENNESSEE.

Appendix D

INTERSTATE TRANSIT, INC., v. DICK LINDSEY, COUNTY COURT CLERK.

(*Nashville*, December Term, 1929.)
Opinion filed June 28, 1930.

1. COMMERCE. *State privilege tax upon interstate and intrastate bus operation.*

The state may place a privilege tax upon a common carrier transporting by bus over the highways of the state passengers both interstate and intrastate. (*Post*, p. 60.)

Case cited and approved: *Gatlin* v. *Harrison*, 155 Tenn. (2 Smith), 560.

Citing: *Clark* v. *Poor*, 274 U. S., 557; *Sprout* v. *South Bend*, 277 U. S., 170.

2. TAXATION. *Privilege taxes. Revenue Act of 1927 includes busses operating interstate.*

The Revenue Act of 1927, which levies a tax on "each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this state for a distance of more than ten miles per trip" embraces in its terms busses transporting interstate only. (*Post*, p. 61.)

Act cited and construed: Acts 1927, Ch. 89, Sec. 4.

3. COMMERCE. *Power of state to tax interstate bus operation.*

The power of the state to impose "a reasonable charge" upon busses making use of its highways for interstate transportation is not limited to a regulation or license fee under the police power

and is not confined to legislation which appropriates the fund exclusively and specifically to highway purposes. (*Post*, p. 61.)

Citing: *Clark* v. *Poor*, 274 U. S., 557.

4. COMMERCE. *Constitutional law. State may levy non-discriminatory and reasonable tax.*

The Commerce Clause does not restrict the power of the state to tax unless (1) the tax is discriminatory, or (2) it is unreasonably burdensome on interstate commerce. (*Post*, p. 62.)

5. TAXATION. *Privilege tax upon bus operations levied by Act of 1927 is non-discriminatory.*

The Revenue Act of 1927 which levies a privilege tax upon all bus operators using the roads of the state, (1) from point to point within the state, (2) from point to point within a county, and (3) from a point within to a point without the state, provided the distance is as much as ten miles, does not discriminate against interstate commerce. (*Post*, p. 62.)

Act cited and construed: Acts 1927, Ch. 89, Sec. 4.

6. COMMERCE. *Constitutional law. Right of state to charge for use of state highways.*

A state may not only regulate under its police power all the users of highways built and maintained by the state, but it may also levy a charge for the use of such highways. The placing of such a charge upon interstate carriers is not prohibited by the Commerce Clause. (*Post*, p. 62.)

Citing: *Hendrick* v. *Maryland*, 235 U. S., 610; *Clark* v. *Poor*, 274 U. S., 557.

7. TAXATION. *Privilege tax. Tax imposed upon busses by Revenue Act of 1927 held reasonable.*

The privilege tax imposed by the Revenue Act of 1927 upon busses is a reasonable charge for the use of the state highways. (*Post*, p. 64.)

8. TAXATION. *Constitutional law. State charge for use of highways need not go to highway fund.*

Since the state may exact a charge for the use of its highways, the form or name of the charge is not determinative of the right and the failure to designate in the Act fixing the charge the fund into which the proceeds are primarily to go does not defeat the right. This is hardly more than a matter of bookkeeping. (*Post*, p. 64.)

Citing: *Kane* v. *State*, 81 N. J. L., 594; *Kane* v. *New Jersey*, 240 U. S., 160; *Sprout* v. *South Bend*, 277 U. S., 170; 5 R. C. L., 797.

FROM DAVIDSON.

Appeal from the Chancery Court of Davidson County.—HON. R. B. C. HOWELL, Chancellor.

LACKEY & LOSER, for complainant, appellee.

R. E. MAIDEN, ROY H. BEELER and W. H. EAGLE, Assistant Attorneys-General, for defendant, appellant.

MR. JUSTICE CHAMBLISS delivered the opinion of the Court.

This appeal calls for a construction in application of Section 4, Chap. 89 of the Revenue Act of 1927. The bill was filed to recover privilege taxes paid to the defendant Clerk under protest by an Ohio corporation operating passenger motor busses, known as Colonial Stages, between Cincinnati, Ohio, through Kentucky

and Tennessee, via Louisville, Nashville and Chattanooga, to Atlanta, Georgia. The paragraph of the Section under which collection was made is headed "Classification No. 3" and is as follows:

"AUTOMOBILE BUSSES OPERATING UPON THE HIGHWAYS OF THIS STATE AND RUNNING INTO OTHER STATES, NOT LIABLE UNDER THE FOREGOING PROVISIONS.

(State Privilege Tax only.)

"Each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip, and not liable for a privilege tax under the foregoing provisions, shall pay as follows:

"Each bus carrying 5 passengers or less, per annum	$ 50.00
"Each bus carrying over 5 passengers and not more than 10 passengers, per annum	100.00
"Each bus carrying over 10 passengers and less than 15 passengers, per annum	200.00
"Each bus carrying 15 passengers and less than 20 passengers, per annum	350.00
"Each bus carrying over 20 passengers and less than 30 passengers, per annum	500.00
"Each bus carrying over 30 passengers, per annum	750.00

"Provided, that this tax shall be in lieu of all county, and municipal taxes; Provided, further,

privilege taxes accruing under this heading shall go and belong exclusively to the General Funds of the State."

The corporation says that it transports interstate only, that therefore the Act does not, fairly construed, embrace it, and that if construed to embrace it the tax laid would be in contravention of the Commerce Clause of the Federal Constitution (Art. 1, Sec. 8, Clause 3).

The State insists, (1) that the corporation transports both intrastate and interstate, and therefore comes within the terms of the Act, and (2) that even though its business is interstate only, the Act applies and the Federal Constitution does not prohibit its application.

The Chancellor found on the record made that the corporation was doing interstate transportation only, and that the State is precluded by the Commerce Clause of the Federal Constitution from collection of the tax. While the proof shows some disposition on the part of employees of the corporation to wink at and make easy an evasion of the interstate policy of the Corporation, through the use of tickets calling for destinations immediately over the State lines, we think the record as a whole sustains the finding of the Chancellor that the rules and regulations of, and the instructions issued by the Corporation, together with the form and recitals of its tickets, make out a case of interstate business only.

(1) Conceding that the transportation is interstate, is this Corporation so operating over the highways of the State liable for this tax? A common carrier transporting by bus passengers both interstate and intrastate was held liable for a tax of like nature in *Gatlin* v. *Harrison*, 155 Tenn., 560. This Court followed the opinion of the U. S. Supreme Court in *Clark* v. *Poor, et al.*, since reported in 274 U. S. 557, 71 L. Ed., 1200, in

which case the transportation was interstate only. The later case of *Sprout* v. *South Bend*, 277 U. S., 170, 72 L. Ed., 837 was in accord. Counsel for the Corporation frankly admit that these, and other cases, clearly recognize that a fee may be lawfully exacted by the State from one doing an interstate transportation business only, but say (1) that the Revenue Act of 1927 does not by its terms apply to one transporting passengers interstate only, and (2) that an essential distinction exists between a license fee going into a special highway fund, and a privilege tax going into the general funds of the State. Counsel quote from *Sprout* v. *South Bend*, *supra*, as follows:

> "It is true also that a State may impose even on motor vehicles engaged exclusively in interstate commerce, a reasonable charge as their fair contribution to the cost of constructing and maintaining the public highways."
>
> Citing, *Hendrick* v. *Maryland*, 235 U. S., 610, 622, 59 L. Ed., 385 and
>
> *Interstate Busses Corp.* v. *Blodgett*, 276 U. S., 245, 72 L. Ed., 551.

(2) We think this section of our Revenue Act embraces in its terms busses transporting interstate. The caption of the pertinent paragraph reads, "busses . . . running into other states," and in its body it levies the tax on "each person, firm or corporation operating an automobile bus carrying passengers upon the highways of this State for a distance of more than ten miles per trip," and not liable under preceding paragraphs. A purpose is indicated by the ten mile restriction to avoid burdening interstate transportation unreasonably, relieving from this tax in cases of incidental and incon-

sequential crossing of, or entry over, the state lines in the course of through travel.

(3) We come then to this single issue: Is the power of the State to impose "a reasonable charge" upon busses making use of its highways for interstate transportation limited to a regulation or license fee under the police power, as insisted, and confined to legislation which appropriates the fund exclusively and specifically to highway purposes, either of regulation or maintenance? This insistence seems to be met by Mr. Justice Brandeis in *Clark* v. *Poor*, *supra*, who, after referring to the contention therein made that "all of the tax is not used for maintenance and repair of the highways," said: "This if true, is immaterial. Since the tax is assessed for a proper purpose and is not objectionable in amount, the use to which the proceeds are put is not a matter which concerns the plaintiffs."

(4) The Commerce Clause does not restrict the power of the State to tax unless (1) the tax is discriminatory, or (2) it is unreasonably burdensome on interstate commerce.

(5) Here we have no discrimination. A like tax is levied by the different paragraphs of the pertinent section of the Act on all bus operators using the roads of the State, (1) from point to point within the State, (2) from point to point within a County, and (3) from a point within to a point without the State—provided the distance is as much as ten miles.

(6) Nor is this tax apparently unduly burdensome. Not only is the charge approximately the same on all motor vehicles of like passenger carrying capacity, whether traveling wholly within the State or not, but it is fixed according to a "uniform, fair and practicable standard."

In *Hendrick* v. *Maryland, supra,* it was said:

> "In view of the many decisions of this Court there can be no serious doubt that where a state at its own expense furnishes special facilities for the use of those engaged in commerce, interstate as well as domestic, it may exact compensation therefor. The amount of the charges and the method of collection are primarily for determination by the State itself; and so long as they are reasonable and are fixed according to some uniform, fair and practicable standard, they constitute no burden on interstate commerce." (Citing authorities.)

And in *Clark* v. *Poor, supra,* it was said:

> "The highways are public property. Users of them, although engaged exclusively in interstate commerce, are subject to regulation by the state to insure safety and convenience and the conservation of the highways. (Citing authorities.) Users of them although engaged exclusively in interstate commerce, may be required to contribute to their cost and upkeep. Common carriers for hire who make the highways their place of business may be properly charged an extra tax for such use." (Citing authorities.)

It is to be borne in mind that the privilege of use of highways, built and maintained by the states at enormous expense, is a privilege in a peculiar sense not applicable to the use by railways of their rights of way over roadbeds and rails owned and maintained by the railways, rather than the state. The language above quoted from opinions of the U. S. Supreme Court, one

by Mr. Justice Brandeis and the other by Mr. Justice McReynolds, suggests this distinction, and clearly recognizes the right of a state, not only to regulate under its police power all the users of its highways, but the right to charge therefor. It is not the placing of a tax charge upon such carriers interstate, which is prohibited by the Commerce Clause, but the placing of such tax in such a way as to burden and interfere with the free movement of commodities or passengers interstate. A charge is not a burden when its equivalent in goods, service or accommodation is exchanged therefor. The State furnishes expensively constructed and maintained highways for the accommodation of these carriers for hire and for profit. An interstate passenger bus might as consistently contend against a toll charge over a river bridge, as against a charge for traversing a State owned highway. The record shows that the fare for a single passenger across the state is $3.50, and the tax on a 20-passenger bus is $350 per year.

(7) Assuming that a bus makes but one trip daily, it traverses more than 200 miles of this highway at a charge of less than $1 for each 15 to 20 passengers. The tax thus appears to be entirely reasonable.

(8) Clear as it is, both on principle and authority, that the State may exact a charge for the use of its highways, without reference to whether the user comes, or whence he goes, we are not of opinion that the form or name of the charge is determinative of the right. Nor are we persuaded that the right is defeated by a failure to designate in the Act by restrictive terms the fund into which the proceeds are primarily to go. This is hardly more than a matter of bookkeeping. Once in the general funds of the State, as provided by this Act, it is subject to distribution and allocation in any direc-

tion where it may be found to be most needed. If it meets or relieves the State's requirements in one direction, more is left for application in another. It is a contribution to the upkeep of the State's government as a whole, and a large part of this upkeep cost is the item of highways.

In 5 R. C. L., p. 797, it is said that, "a state may impose a tax, reasonable in amount and not discriminatory, on automobiles using the highways of the State, though they belong to non-residents and are employed in interstate commerce." *Kane* v. *State*, 81 N. J. L., 594, 80 Atl., 453, Ann. Cas. 1912D., 237, is cited. In that case the Court recognizes that the license fee is a tax for revenue purposes and that it affects interstate commerce, but finding the charge reasonable and not discriminating, holds such a charge not obnoxious to the Federal Commerce Clause. Decisions of the U. S. Supreme Court affirming the right of a state to impose charges, although affecting interstate commerce, are referred to, where the state had constructed wharfs for the handling of freight, or locks or booms in navigable streams, on the sound principle that the state "having expended moneys, either itself, or by the agencies created by it, in increasing the facility with which commerce, either interstate or intrastate, may be carried on, is entitled to charge a fair remuneration for the outlay made by it, and for the maintenance of the public work which it has constructed." And so applicable to the case before us is the further language of the opinion of the learned Chief Justice in that case that we quote at length:

> "A very ordinary example of the exercise of this power is the construction of public roads known as 'turnpikes' by agencies created by the state, for

the use of which tolls are permitted to be charged to persons using the same. Such public roads are open to the use of every person desiring to travel upon them upon payment of the tolls authorized to be charged, but it has never been suggested, so far as we are aware (and certainly any such suggestion would be without merit), that a team and wagon bringing merchandise from another state is entitled to the use of these improved highways without the payment of the required toll because engaged in interstate commerce.

"Although, ordinarily, turnpikes are built and owned by corporations created by the state for the purpose of constructing and maintaining them, what the state may do indirectly through such agencies it may do directly,—that is, it may itself lay out and construct such improved public roads and charge reasonable tolls to all persons using the same, without regard to the character of the business for which they are being used. And this is practically what New Jersey is now doing. It has spent millions of dollars in improving the roads of the state, and is yearly expending hundreds of thousands more in their extension and maintenance. It has found that the use of these roads by heavy and swiftly moving automobiles results in their rapid deterioration, and increases largely the annual expense of maintaining them in proper condition. It considers, and rightly, we think, that a use of its roads which is so abnormally destructive should no longer be free, and, by the law of 1908, it imposes upon all of these vehicles which are driven over its roads a charge for such use for the purpose of raising revenue to be applied

to their upkeep. Instead of charging a mileage fee, or toll, to be regulated by the distance traveled, it has seen fit to require the payment of a lump sum by the owners of such machines, for the privilege of using its roads, the charge being regulated by the horsepower shown. . . . The charging of an annual sum for the use of its highways by automobiles, instead of a mileage fee, is clearly a matter within the discretion of the state. No constitutional objection lies in the way of a legislative body's prescribing any mode of measurement to determine the amount it will charge for the privilege it bestows. *Home Ins. Co.* v. *New York*, 134 U. S., 594, 10 S. Ct., 593, 33 U. S. (L. Ed.), 1025. The only limit upon its power is that the amount charged shall not be unreasonable; and there is no suggestion that such a condition is created by the present law."

This decision was reviewed and affirmed by the U. S. Supreme Court in *Kane* v. *New Jersey*, 240 U. S., 160, 61 L. Ed., 222, and cited with approval in *Sprout* v. *South Bend, supra.*

We are of opinion that the Revenue Act applies and that the tax is valid. The decree must be reversed and the bill dismissed.

APPENDIX E.

Appendix E.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

JOHNSON TRANSFER AND FREIGHT LINES AND J. M. SELF,

Complainants,

Versus

JAMES A. PERRY, ET AL.,

Defendants.

In Equity, No. 598.

This case came on for hearing for interlocutory injunction before a Court composed of the Honorables Rufus E. Foster, Circuit Judge, and Wayne G. Borah, District Judge, and Samuel H. Sibley, District Judge. In accordance with our opinion filed herewith, it is considered and adjudged that the defendants and their agents be enjoined pending the final hearing of this case from prosecuting the complainants or their agents for operating their trucks as described in the complaint without certificates of public necessity and convenience, and licenses, provided that defendants may move to dissolve the injunction, on withdrawing their demand as a condition of issuing certificates and licenses for a bond to protect complainants' patrons, and for the agreement to abide by the Georgia Motor Carriers Act and the regulations thereunder.

This January 24, 1931.

RUFUS E. FOSTER,
United States Circuit Judge.

WAYNE G. BORAH,
United States District Judge.

SAMUEL H. SIBLEY,
United States District Judge.

O. C. FULLER, *Clerk.*

Appendix E.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

JOHNSON TRANSFER AND FREIGHT LINES AND J. M. SELF,

Complainants,

Versus

JAMES A. PERRY, ET AL.,

Defendants.

In Equity, No. 598.

Before FOSTER, Circuit Judge, and BORAH and SIBLEY, District Judges.

SIBLEY, District Judge:

The State of Georgia is building and improving a Statewide system of highways. Acts 1921, page 199. The Motor Carriers Act of 1929, and the tax upon motor carriers imposed the same year, Acts of 1929, page 292, page 74, are parts of this plan. The Motor Carriers Act was before this Court in the case of *Southern Motorways Incorporated* v. *Perry, et al.*, 39 F. (2), 145. The separate legislative classification of those who make the use of the public streets and highways their business was there justified, and the Act upheld in many of its features. The present case is supplementary to that. It involves motor carriers engaged wholly in interstate commerce between fixed termini, and over roads constructed under the Federal Highway Acts. No substantial issue of fact exists. The petition and answer make practically an agreed statement of facts. The summarized facts are: One complainant, Self, is a private carrier, resident in Alabama, the other, Johnson Lines, is a common carrier,

resident in Tennessee; both operate freight trucks regularly between Birmingham, Alabama, and Chattanooga, Tennessee, only. The sole available paved road passes for twenty-three miles through Georgia over a highway built or rebuilt with Federal aid, under the Act of Congress. Neither carrier accepts or delivers freight in Georgia. Each sought to apply to the Georgia Public Service Commission for a certificate of public convenience and necessity, and for annual licenses for their trucks, as required by the Georgia statute, tendering the requisite fees for these. The Commission would not entertain the applications unless made on its printed form, which contains an agreement by the applicant to observe all the requirements of the Georgia statute, and of the regulations established by the Commission thereunder; nor unless the applicant would give a bond as required by the Georgia Act "to secure the owner against loss or damage to freight," and make a deposit of $75.00 to secure payment of a tax of ¾ cents per mile traveled, as imposed by the Georgia Tax Act of 1929. The Commission conceded that it had no power to fix the rates of carriage of the applicants, and each applicant offered to give a bond to answer for negligent injuries as required by the Act, but refused to give the bond for the benefit of its patrons, or to sign the promise demanded, or make the tax deposit. Certificates were refused for this reason. The Commission then prosecuted the drivers of the trucks for operating without certificates and licenses under provisions of the Georgia statute. Injunction is sought against the enforcement of the statute on the grounds that as applied to complainants on these facts, it violates the commerce clause of the Federal Constitution, and that the law laying the tax based on mileage violates the commerce clause, and the equal protection

clause of the Fourteenth Amendment, and also a paragraph of the State Constitution involving the title of the Act and Sec. 9 of the Federal Highway Act of 1921, which prohibits tolls of any kind being charged on the roads built or rebuilt by Federal aid.

From the great mass of decisions respecting commerce done by railroad and express companies and pipe lines, these pertinent principles may be drawn. Direct regulation of interstate carriage as such, including regulation of the persons carrying and their vehicles, is vested in the Federal Government. A general police power and a general taxing power is reserved to the State Government, and these may usually be exercised without excepting persons and instrumentalities engaged in inter-state commerce, provided there is no discrimination against inter-state commerce, and provided no direct and unreasonable burden is put upon it. The mere privilege of engaging in inter-state commerce is not derived from the State and cannot be conditioned by a State upon procuring a license or paying a tax. Regulations of commerce by Congress, including those of persons carrying it on, and the instrumentalities used in it, although they may fall in the field of ordinary police power, such as laws regulating employers' liability, hours of service of employees, safety appliances on equipment, and the like, will over-ride the police regulations of the State when in conflict with them, because of the supremacy of the Federal Constitution and laws, and although in the absence of Congressional legislation and such State regulations would stand. But railroads, express companies, and pipe lines have used only their own transportation facilities. In the present revolutionized traffic by motor vehicles over paved roads, the expensively improved highway belonging to the public is used. The right of the State

furnishing it to select the traffic to be done over it, and to protect not only the public in its use but the highway itself, and to obtain compensation for this use, and contribution for its up-keep, is undoubted, and this right of necessity very greatly extends the control by the State over commerce of all sorts upon it, and the taxes and other charges which it may make against all users whether engaged in intra-state or inter-state commerce. See *Hendrick* v. *Maryland*, 235 U. S., 410; *Kane* v. *New Jersey*, 242 U. S., 160, which did not involve the business of carriage; and *Packard* v. *Banton*, 264 U. S., 140, and *Interstate Busses* v. *Blodgett*, 276 U. S., 245, which did involve such business. The older cases concerning carriers in interstate commerce cannot be applied without careful consideration of this new element. For illustration, the State of Georgia could not require a license nor a tax of a railroad carrier for the mere privilege of carrying interstate freight over the company's own tracks in Georgia, but it certainly could if that carrier wished to use the tracks built and owned by the State from Atlanta to Chattanooga. So the State may license or refuse to license, may condition or charge for, the use of its improved roads when they are turned from their common uses and purposes to the carrier's business. *Schlesinger* v. *City of Atlanta*, 161 Ga., 148; *Packard* v. *Banton*, 264 at page 144. The interstate carrier has no better right than any other to use the State's improved highway without its consent, or without paying for it. We accordingly think that the certificate of public convenience and necessity, with a reasonable fee therefor, and an annual license fee for the trucks, are legally demandable as a non-discriminatory prerequisite of the use of the highway for carrier purposes, even though the commerce involved is wholly inter-state. *Clark* v. *Poor*, 274 U. S., 554.

No question of arbitrary or discriminatory refusal is here involved. The Commission, indeed, offers to issue the certificates, but it is contended that the offer is unlawfully conditioned entitling complainants to dispense with them. When refusal of the privilege of using the highway is based solely on an applicant's refusal to yield to an unconstitutional requirement made of him, it has been held that he may ignore the certificate and license required, although a general refusal might have been lawful. *Michigan Commission* v. *Duke*, 266 U. S., 570; *Buck* v. *Kuykendall*, 267 U. S., 307; *Frost Trucking Company* v. *Commission*, 271 U. S., 583. The requirement of the Georgia Act that a bond be given to protect the owner of the freight transported, in addition to one to answer to the public for negligent injuries, is unconstitutional as applied to these complainants. They offer to give the latter bond for the safety and protection of the public in Georgia. The State of Georgia has no call to meddle with their patrons in Alabama and Tennessee. The bond for their protection touches only their contracts of carriage, and to require it is clearly a direct regulation of inter-state commerce, having no relation to the safety or convenience of the Georgia public, or to the use of the roads. Compare *Sprout* v. *South Bend*, 277 U. S., 164. So the exaction of a promise to obey all the requirements of the Georgia statutes and the regulation of the Commission as a condition of issuing the certificate and license is unconstitutional. Beside the matter just discussed, others of these requirements cannot be constitutionally imposed on an inter-state carrier and a promise to submit to them cannot be demanded. The Act seems to require a private carrier to become subject to the regulations and obligations of a common carrier,

which could not be required of the complainant Self. *Michigan Commission* v. *Duke*, 266 U. S., 570.

We think on the other hand that the deposit of $75 to secure the tax of ¾ cents per mile is demandable. The Tax Act of 1929, page 74, requires the collection "from every automobile transportation company, association, or individual, as defined hereafter, to which has been granted a certificate of public convenience and necessity, which it or they are hereby required to obtain from the Public Service Commission of the State, permitting him, it or them, to engage in the transportation of passengers or freight, or both, between fixed termini, an occupation tax on a mileage basis of (omitting parts of the schedule not applicable to complainants) ¾ cents per mile, on all trucks with a loaded capacity of less than 5,500 pounds, . . . coming within the terms of this Act, for every mile traveled by the motor vehicles of such company, association or individual, over the public highways of this State." The tax is to be settled quarterly, but $75 is to be put up at the time of issuance of the certificate. The persons to whom certificates are to be granted, and of whom they are required, are defined by the Motor Carriers Act, Acts of 1929, at page 295, and are those who own, control or operate motor propelled vehicles used in the business of transporting persons or property for hire over the public highways of the State, excluding streets or towns and cities, and with other exceptions not here material. The tax is laid only on such carriers as operate between fixed termini. That as an administrative precaution the Commission requires the $75 to be paid before the certificate issues is not important. It is a mere deposit. It is easier and safer to return the deposit, if no certificate is issued, than to cancel the certificate for failure after issuance to make the deposit.

The contention that the Act is void under the provision of the State Constitution that no act shall contain matter different from that stated in its title because the title authorizes only taxation, while the act also regulates by requiring a certificate to be obtained, is also without merit. The certificate was validly required by the Motor Carriers Act of the same date. The only practical effect of the Tax Act was to levy the tax, a thing fully covered by its title. There could have been no legislative surprise or confusion about it. Nor is the language "truck with a loaded capacity of 5,500 pounds" without meaning so as to make the tax non-operative. It means "load capacity" excluding the weight of the truck itself. The equal protection clause of the Fourteenth Amendment is not violated by confining the tax to motor carriers having fixed termini. It may or may not be true that the vagrant carriers get as much benefit from, and do as much damage to, the road on the whole as the constant users of a particular route, but the business of the latter is apt to be more extensive, more regular, and more profitable, and their tax is more readily checked and collected. The difference is like that between a storekeeper and a peddler, or between a railroad and a dray line. We cannot say the classification is arbitrary. Whether the commerce clause is violated raises a harder question. As an occupation tax on doing interstate carriage it would fall, except that it is not for the mere privilege of doing a carriage business, but for doing it on the public highways, where such business cannot be done as a matter of absolute right, either in inter-state or intra-state commerce. The tax is not a flat rate on all users of the road, as was the case in *Sprout* v. *South Bend*, 277 U. S., 164, but is scaled according to size of vehicles and actual use of the road.

Despite this being called an occupation tax it is in substance a tax to compensate for the use of the road. It is in addition the truck license charge. While the fees for the certificate are appropriated to the expense of executing the Motor Vehicle Act by its own provisions, and the license tax is so used in practice, this mileage tax is a general fund. The occupation tax on sellers of gasoline of 6 cents per gallon sold, without regard to the use made of the gasoline, Act of 1929, page 99, is partly allocated by law to build and maintain the roads, and is sufficient therefor. But this also is a general fund, not bound to be applied specially as though it were an inspection fee and justifiable only as such. If the mileage tax can be justified only as a charge for using the road, it need not in consequence be spent upon the roads if the State substitutes other general funds many times greater. It is no concern of the tax-payer which money the State spends on the roads, if his tax in kind and amount is justified. Nor can he complain that he pays two or more taxes if each is for a justified purpose and the aggregate exceeds no constitutional limit. *Inter-state Busses* v. *Blodgett, supra.* Since complainants make no stops in Georgia, it is not likely that they buy any gasoline, and thus contribute indirectly to the upkeep of the roads through the tax on its sale. The mileage tax is not shown to be actually burdensome to inter-state commerce. For aught we know it is well worth to the owner the 17¼ cents charged for his truck to travel the twenty-three miles in Georgia over a paved highway instead of an unpaved dirt road. The tax in its substance is nearer that sustained as to inter-state carriers in *Inter-state Busses* v. *Blodgett*, 276 U. S., 245, and *Clark* v. *Poor*, 274 U. S., 554, than that condemned in *Sprout* v. *South Bend*, 277 U. S., 163.

There remains the question whether the tax being

imposed on account of and fixed by the use of the road is contrary to Section 9 of the Federal Highway Act of 1921, which forbids on Federal aid roads "tolls of any kind." Assuming the constitutionality of this prohibition, what is meant by "tolls?" In the past when a road was paved or a bridge built it was usual to erect gates, and collect from each vehicle or person passing a charge for passage, which went to the owner of the franchise. These clearly were tolls, and intended to be abolished as a nuisance to travel. But since the entire cost of maintaining the Federal aid roads was put upon the States, it can hardly be thought Congress intended to exclude all taxation for that purpose which has any reference to the use of the road, or is measured by the extent of the use. Especially would this be doubted when the taxation is on the business of carriage, which is not an ordinary but an extraordinary use of the road. Considering the great damage done by freight trucks continually using the same road, and the great benefit to the carrier thus provided with a track which he does not have to maintain, or pay property taxes on, it is just that such carrier should in proportion to his use of the road contribute to the public treasury which maintains it. If carriers, both inter-state and intra-state, cannot be made so to contribute, the Federal aid roads will soon be appropriated by them. In *Conley and Hamilton* v. *Snook*, 281 U. S., 73, a toll was defined as a "proprietor's charge for the passage over a highway or a bridge *exacted as and when* the privilege of passage is exercised." The fees there involved were held to be "the demands of sovereignty and not of proprietorship," and were taxes rather than tolls. Following this strict construction of the word "tolls," we hold this a tax and valid.

By Sec. 22 of the Motor Carriers Act each section

is independent and to be enforced though others be ineffective. It follows that complainants are justified in operating without certificate and truck license only so long as these are withheld on account of their refusal to give the bond and make the agreement which we have held to be not demandable of them. Accordingly we will grant the interlocutory injunction sought, but with leave to the defendants to apply for a dissolution of it should these unlawful demands be withdrawn by them.

January 26, 1931.

O. C. FULLER, *Clerk.*

HIGHWAY LAWS AND RULES

There is no speed limit on state highways except through incorporated towns or cities. Be reasonable and please drive carefully.

It is unlawful for any person while under the influence of intoxicating liquor or narcotic drugs to drive any motor vehicle in this state.

It is unlawful for any person to drive in a reckless manner or at such a speed as to endanger the lives or property of others.

A stop is required at all railroad crossings where a "Stop" sign is erected. No stop is required where no such sign is erected, but when a railroad sign is seen, slow down for safety.

In overtaking a vehicle, pass to the left, but do so only where the left side is clearly visible and free from oncoming traffic for a sufficient distance to permit safe overtaking.

A driver must not overtake and pass another vehicle on the crest of a grade or on a curve unless the driver's view is unobstructed at least 300 feet ahead of his vehicle.

Vehicles entering into main highways from a side road or a private road or drive must come to a complete stop before entering said highway and right-of-way must be given to vehicles traveling on the main highways.

Main highways are designated by the erection of "Stop" signs at all entrances thereto.

Motor vehicles are required to carry two headlights and one tail light.

Every vehicle except a motor vehicle must be equipped with a light plainly visible for at least 200 feet from the front and rear.

Parking on the main traveled portion of highways is prohibited.

Motor vehicles properly registered under the laws of another state are exempt from registration in this state for a period of 30 days.

Pedestrians should walk on the left side of the road.

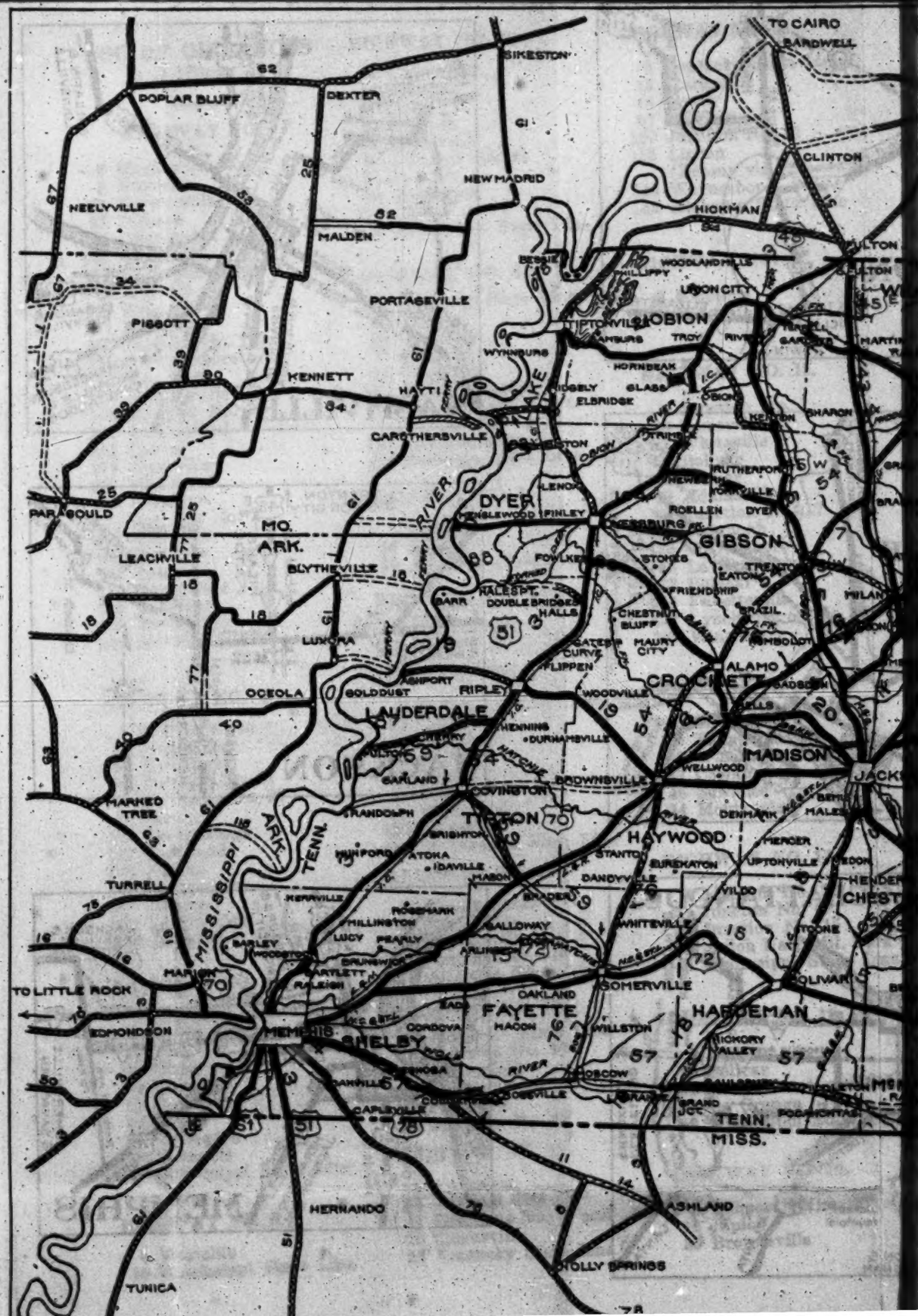
Move to the right side of the road when a signal is given by a driver of a vehicle who wishes to overtake you.

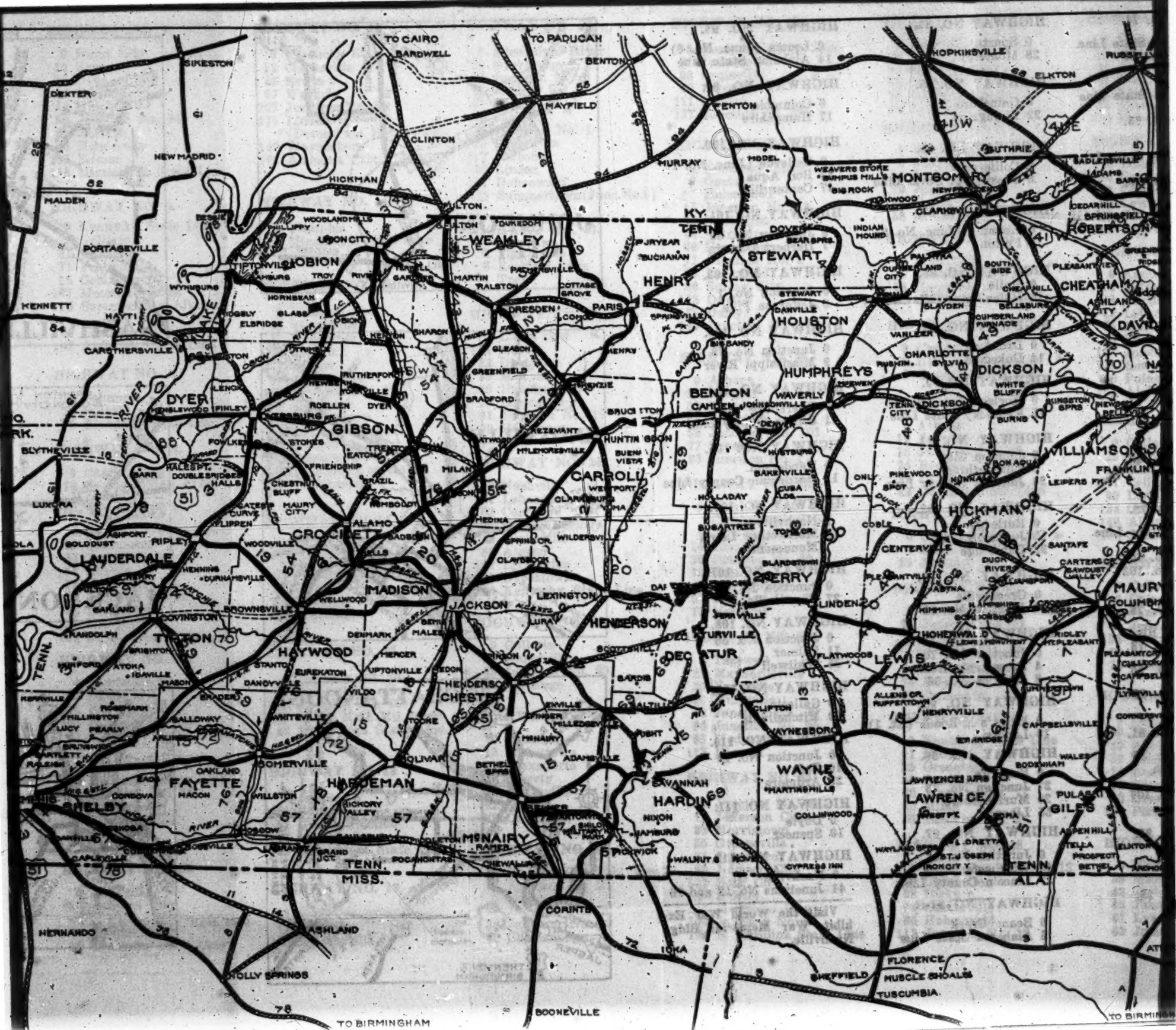
The Tennessee Highway Patrol has District Offices located as follows:

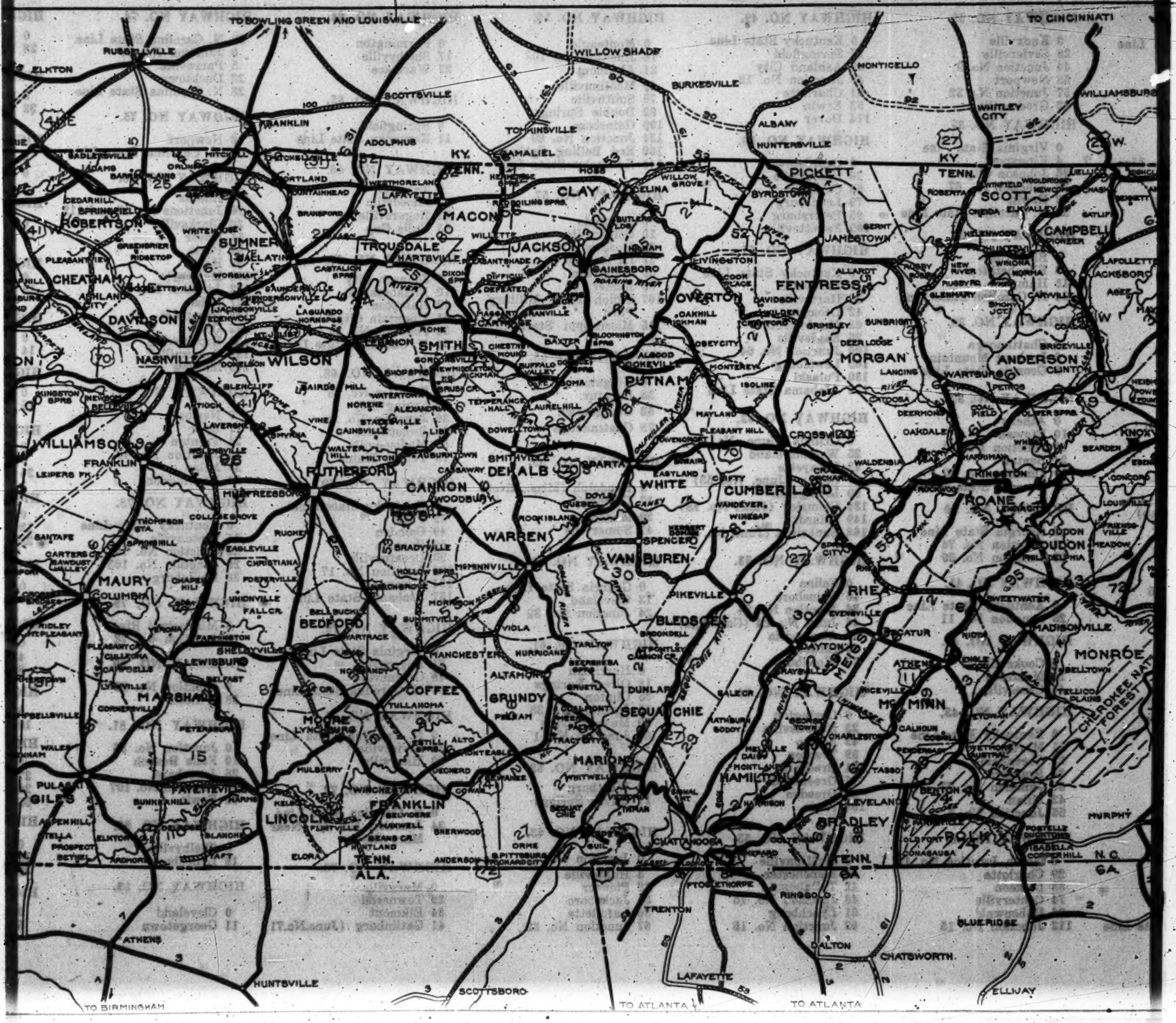
City	Telephone	Address
Chattanooga	6-4591	State Garage
Clarksville	913	State Garage
Cookeville	87	State Garage
Jackson	861	State Garage
Johnson City	127	John Sevier Hotel
Knoxville	2-6724	Andrew Johnson Hotel
Lawrenceburg	146-W	State Garage
Memphis	6-4450	City Police Station
Morristown	92	Chamber of Commerce
Tullahoma	1	City Hall
Union City	608	City Hall

Headquarters Office of this patrol located in War Memorial Building, at Nashville, Tennessee. Telephones 6-0501 and 6-8781.

Information and assistance will be given at any of the above offices or by any patrolman on the highways.




TO CAIRO
BARDWELL
TO PADUCAH
BENTON
HOPKINSVILLE
RUSSELLVILLE
ELKTON
DEXTER
SIKESTON
MAYFIELD
FENTON
CLINTON
NEW MADRID
MURRAY
GUTHRIE
HICKMAN
MODEL
WEAVERS STORE
BUMPUS MILLS
BIG ROCK
MONTGOMERY
NEW PROVIDENCE
CLARKSVILLE
MALDEN
FULTON
KY.
TENN.
WEAKLEY
DUKEDOM
DOVER
INDIAN MOUND
ROBERTSON
PORTAGEVILLE
OBION
TIPTONVILLE
MARTIN
RALSTON
PARIS
HENRY
STEWART
DRYYEAR
BUCHANAN
CHEATHAM
KENNETT
HAYTI
DRESDEN
HOUSTON
DANVILLE
CARUTHERSVILLE
HUMPHREYS
DICKSON
DYER
GIBSON
BENTON
CAMDEN
WAVERLY
HUNTINGDON
CARROLL
BLYTHEVILLE
BAKERSVILLE
WILLIAMSON
FRANKLIN
LUXORA
HALLS
MILAN
HOLLADAY
HICKMAN
CROCKETT
ALAMO
RIPLEY
CENTERVILLE
PERRY
LAUDERDALE
MADISON
JACKSON
LEXINGTON
HENDERSON
LINDEN
MAURY
COLUMBIA
COVINGTON
BROWNSVILLE
TIPTON
HAYWOOD
DECATUR
LEWIS
CHESTER
HENDERSON
SOMERVILLE
BOLIVAR
FAYETTE
HARDEMAN
WAYNE
SHELBY
SAVANNAH
HARDIN
LAWRENCE
GILES
PULASKI
McNAIRY
TENN.
MISS.
ALA.
CORINTH
ASHLAND
HERNANDO
HOLLY SPRINGS
IUKA
FLORENCE
SHEFFIELD
MUSCLE SHOALS
TUSCUMBIA
BOONEVILLE
TO BIRMINGHAM
TO BIRMINGHAM


TO BOWLING GREEN AND LOUISVILLE
TO CINCINNATI
RUSSELLVILLE
ELKTON
SCOTTSVILLE
FRANKLIN
WILLOW SHADE
TOMPKINSVILLE
BURKESVILLE
MONTICELLO
WHITLEY CITY
WILLIAMSBURG
ALBANY
HUNTERSVILLE
ADOLPHUS
AMALIEL
KY.
TENN.
HOSS
CLAY
MACON
PICKETT
SCOTT
CAMPBELL
ROBERTSON
SUMNER
TROUSDALE
JACKSON
GAINESBORO
LIVINGSTON
JAMESTOWN
CHEATHAM
DAVIDSON
NASHVILLE
WILSON
SMITH
OVERTON
FENTRESS
MORGAN
ANDERSON
PUTNAM
WILLIAMSON
FRANKLIN
RUTHERFORD
DEKALB
SPARTA
WHITE
CUMBERLAND
ROANE
CANNON
WARREN
VAN BUREN
MAURY
COLUMBIA
BEDFORD
MANCHESTER
BLEDSOE
RHEA
MONROE
LEWISBURG
COFFEE
GRUNDY
SEQUATCHIE
MARSHALL
MOORE
MARION
MCMINN
HAMILTON
GILES
FAYETTEVILLE
LINCOLN
FRANKLIN
CHATTANOOGA
CLEVELAND
BRADLEY
POLK
TENN.
ALA.
GA.
N.C.
ATHENS
HUNTSVILLE
SCOTTSBORO
TRENTON
DALTON
CHATSWORTH
LAFAYETTE
BLUE RIDGE
ELLIJAY
TO BIRMINGHAM
TO ATLANTA
TO ATLANTA

COPYRIGHT 1930

LOG OF DISTANCES
Miles

HIGHWAY NO. 1.

0 Mississippi River
3 Memphis
66 Brownsville
92 Jackson
125 Huntingdon
145 Camden
152 Tennessee River
169 Waverly
198 Dickson
241 Nashville
262 Junction No. 102
278 Murfreesboro
291 Woodbury
314 McMinnville
322 Junction No. 30
327 Rock Island
342 Sparta
370 Crossville
397 Rockwood
410 Kingston
428 Junction No. 2
448 Knoxville
481 Rutledge
490 Tate
513 Rogersville
543 Kingsport
558 Blountville
568 Bristol

HIGHWAY NO. 2.

0 Murfreesboro
32 Manchester
54 Monteagle
75 Junction No. 27
By Route No. 27
80 Jasper
113 Chattanooga
147 Cleveland
174 Athens
189 Sweetwater
201 Loudon
207 Lenoir City
213 Campbell (Junc. No. 1)

HIGHWAY NO. 3.

0 Kentucky State Line
11 Union City
21 Troy
27 Obion
50 Newbern
58 Dyersburg
82 Ripley
97 Covington
136 Memphis
147 Mississippi State Line

HIGHWAY NO. 4.

0 Memphis
16 Mississippi State Line

HIGHWAY NO. 5.

0 Union City
16 Kenton
26 Dyer
33 Trenton
44 Humboldt
50 Junction No. 43
61 Jackson
80 Henderson
104 Selmer
119 Mississippi State Line

HIGHWAY NO. 6.

0 Kentucky State Line
23 Gallatin
51 Nashville
71 Franklin
96 Columbia
107 Mount Pleasant
116 Summertown (Junc. No. 20)
136 Lawrenceburg
152 Alabama State Line

HIGHWAY NO. 7.

0 Columbia
30 Pulaski
50 Alabama State Line

HIGHWAY NO. 8.

0 Chattanooga
10 Georgia State Line

HIGHWAY NO. 9.

0 Kentucky State Line
29 LaFollette
34 Jacksboro
52 Clinton
72 Knoxville
89 Junction No. 34
108 Dandridge
127 Newport
149 N. Carolina State Line

HIGHWAY NO. 10.

0 Murfreesboro
26 Shelbyville
55 Fayetteville
61 Junction No. 110
67 Alabama State Line

HIGHWAY NO. 11.

0 Kentucky State Line
7 Junction No. 76
23 Springfield
40 Goodlettsville
53 Nashville
85 Junction No. 51

HIGHWAY NO. 12.

0 Nashville
21 Ashland City
46 Junctions No. 76 and 112
50 Clarksville
62 Kentucky State Line

HIGHWAY NO. 13.

0 Kentucky State Line
13 Clarksville
46 Erwin
67 Waverly
107 Junction No. 50
115 Linden
(Detour via Hohenwald)
140 Waynesboro
166 Alabama State Line

HIGHWAY NO. 14.

0 Memphis
13 Mississippi State Line

HIGHWAY NO. 15.

0 Junction No. 1
28 Somerville
41 Whiteville
53 Bolivar
76 Selmer
89 Adamsville
93 Junction No. 17
98 Savannah
130 Waynesboro
158 Lawrenceburg
182 Pulaski
211 Fayetteville
227 Lynchburg on No. 55
247 Winchester

HIGHWAY NO. 16.

0 Shelbyville
19 Tullahoma
35 Winchester
41 Cowan
48 Sewanee
54 Monteagle

HIGHWAY NO. 17.

0 Junction No. 22
21 Juncton No. 69
25 Junction No. 15
32 Shiloh Natl. Mil. Park
48 Mississippi State Line

HIGHWAY NO. 18

0 Jackson
29 Bolivar
51 Grand Junction
54 La Grange
59 Mississippi State Line

HIGHWAY NO. 19.

0 Ashport (Miss. River)
16 Ripley
35 Brownsville

HIGHWAY NO. 20.

0 Mississippi River
16 Dyersburg
21 Junction No. 3
45 Alamo
51 Bells
69 Jackson
76 Junction No. 1
99 Lexington
117 Parsons
136 Linden
157 Hohenwald
178 Summertown (Junc.No.6)

HIGHWAY NO. 21.

0 Tiptonville
6 Reelfoot Lake
21 Troy

HIGHWAY NO. 22.

0 Union City
14 Martin
23 Dresden
39 McKenzie
49 Huntingdon
75 Lexington
91 Junction No. 17
99 Henderson

HIGHWAY NO. 24.

0 Nashville
31 Lebanon
52 Carthage
75 Double Springs
92 Cookeville
86 Algood
107 Livingston
125 Byrdstown
130 Kentucky State Line

HIGHWAY NO. 25.

0 Gallatin
19 Hartsville
33 Junction No. 80
38 Carthage

HIGHWAY NO. 26.

0 Lebanon
13 Watertown
19 Alexandria
26 Liberty
33 Smithville
62 Sparta
80 Cookeville

HIGHWAY NO. 27.

0 Richard City (St. Line)
2 Junction No. 2
7 Jasper
20 Junction No. 28
38 Junction No. 29
40 Chattanooga

HIGHWAY NO. 28.

0 Kentucky State Line
21 Jamestown
58 Crossville
90 Pikeville
111 Dunlap
127 Junction No. 27

HIGHWAY NO. 29

0 Kentucky State Line
9 Oneida
17 Helenwood
16 Junction No. 63
35 Sunbright
46 Wartburg
66 Harriman
71 Junction No. 1
79 Rockwood
96 Spring City
112 Dayton
135 Daisy
149 Junction No. 27

HIGHWAY NO. 30.

0 Athens
16 Decatur
33 Dayton
51 Pikeville
58 Junction No. 101
77 Spencer
93 Junction No. 1

HIGHWAY NO. 32.

0 Virginia State Line
(Cumberland Gap)
4 Junction No. 63
14 Tazewell
20 Junction No. 66
35 Tate
46 Morristown
69 Junction No. 35
71 Newport

HIGHWAY NO. 33.

0 Tazewell
25 Maynardsville
49 Knoxville
65 Maryville
72 Junction No. 72
86 Junction No. 95
95 Madisonville
112 Etowah

HIGHWAY NO. 34.

0 Junction No. 9
12 Jefferson City
25 Morristown
55 Greeneville
81 Jonesboro
89 Johnson City
102 Bluff City
116 Bristol
150 Mountain City
162 Junction No. 67
174 N. Carolina State Line

HIGHWAY N

0 Knoxville
28 Sevierville
44 Junction
55 Newport
57 Junction
83 Greeneville

HIGHWAY N

0 Virginia
4 Kingsport
26 Johnson C
30 Junction
43 Erwin
58 N. Caroli

HIGHWAY N

0 Bluff City
9 Elizabeth
15 Hampton
24 N. Caroli

HIGHWAY N

0 Chattanoo
6 Lookout
8 Georgia

HIGHWAY N

0 Athens
10 Etowah
18 Junction
24 Benton
29 Junction
43 Georgia

HIGHWAY

0 Georgia
3 Junction
30 Junction

HIGHWAY

0 Kentucky
25 Junction

HIGHWAY

0 Cookevil
19 Monterey
44 Crossvill

HIGHWAY

0 Kentucky
11 Martin
25 Greenfie
36 Bradford
38 Junction
42 Milan
55 Junction

HIGHWAY

0 North J
29 Charlott
38 Dickson
74 Centervi
96 Hohenw
112 Junction

HIGHWAY NO. 45

0 Knoxville
28 Sevierville
44 Junction No. 9
55 Newport
57 Junction No. 32
82 Greeneville

HIGHWAY NO. 46

0 Virginia State Line
4 Kingsport
26 Johnson City
30 Junction No. 67
43 Erwin
58 N. Carolina State Line

HIGHWAY NO. 47.

0 Bluff City
9 Elizabethton
15 Hampton
24 N. Carolina State Line

HIGHWAY NO. 48.

0 Chattanooga
6 Lookout Mountain
8 Georgia State Line

HIGHWAY NO. 49.

0 Athens
10 Etowah
18 Junction No. 40
24 Benton
29 Junction No. 60
42 Georgia State Line

HIGHWAY NO. 40

0 Georgia State Line
3 Junction No. 74
39 Junction No. 39

HIGHWAY NO. 41.

0 Kentucky State Line
25 Junction No. 11

HIGHWAY NO. 42.

0 Cookeville
19 Monterey
44 Crossville

HIGHWAY NO. 43.

0 Kentucky State Line
11 Martin
25 Greenfield
30 Bradford
38 Junction No. 77
42 Milan
55 Junction No. 5

HIGHWAY NO. 48

0 North Junction No. 13
29 Charlotte
33 Dickson
74 Centerville
86 Hohenwald
112 Junction No. 15

HIGHWAY NO. 49.

0 Kentucky State Line
17 Springfield
40 Ashland City
46 Junction No. 12
61 Charlotte
93 Erwin
114 Dover

HIGHWAY NO. 50.

0 Beardstown
26 Centerville
58 Columbia
79 Lewisburg
95 Petersburg
109 Fayetteville

HIGHWAY NO. 51.

0 Kentucky State Line
10 Lafayette
26 Hartsville
42 Lebanon
68 Murfreesboro
86 Eagleville
100 Junction No. 64
105 Lewisburg
130 Pulaski
152 Alabama State Line

HIGHWAY NO. 52.

0 Orlinda (Junc. No. 49)
25 Westmoreland
42 Lafayette
77 Celina (Junc. No. 53)
99 Livingston
134 Grimsley (Junc. No. 28)
149 Allardt
168 Sunbright (Junc. No. 29)

HIGHWAY NO. 53.

0 Celina
16 Gainsboro
36 Junction No. 24
44 Junc. No. 24 (Carthage)
56 Alexandria
63 Liberty
79 Woodbury

HIGHWAY NO. 54.

0 Covington
23 Brownsville
42 Alamo
59 Trenton
71 Bradford
77 Greenfield
89 Dresden
104 Paris

HIGHWAY NO. 55.

0 McMinnville
20 Manchester
42 Tullahoma
48 Junction No. 16
61 Lynchburg
62 Junction No. 15

HIGHWAY NO. 56.

0 Monteagle
16 Junction No. 108
21 Altamont
49 McMinnville
70 Smithville
92 Double Springs
109 Gainsboro
124 Junction No. 80
130 Red Boiling Springs
140 Kentucky State Line

HIGHWAY NO. 57.

0 Memphis
20 Collierville
37 Moscow
47 La Grange
69 Middleton
86 Ramer
107 Shiloh Natl. Military Park
115 Mississippi State Line

HIGHWAY NO. 58.

0 Kingston
33 Decatur
52 Georgetown
78 Chattanooga

HIGHWAY NO. 59.

0 Randolph (Miss. River)
17 Covington
29 Mason
47 Somerville

HIGHWAY NO. 60.

0 Georgia State Line
13 Cleveland
24 Junction No. 39

HIGHWAY NO. 61.

0 Harriman
13 Oliver Springs
35 Clinton
55 Junction No. 33
59 Maynardsville
69 Junction No. 1

HIGHWAY NO. 62.

0 Wartburg
17 Oliver Springs

HIGHWAY NO. 63.

0 Junction No. 29
3 Huntsville
28 Pioneer
31 Jacksboro
36 Lafollette
67 Junction No. 32

HIGHWAY NO. 64.

0 Farmington
17 Shelbyville
27 Wartrace

HIGHWAY NO. 65.

0 Springfield
11 Kentucky State Line

HIGHWAY NO. 66.

0 Tazewell
24 Sneedville
51 Rogersville
63 Bulls Gap

HIGHWAY NO. 67.

0 Johnson City
10 Elizabethton
12 Hampton
41 Mountain City
53 Junction No. 34
55 N. Carolina State Line

HIGHWAY NO. 68.

0 Junction No. 28
22 Spring City
36 Junction No. 58
48 Sweetwater
58 Madisonville
75 Tellico Plains

HIGHWAY NO. 69.

0 Kentucky State Line
19 Paris
49 Camden
89 Parsons
95 Decaturville
129 Junction No. 17
134 Savannah
157 Alabama State Line

HIGHWAY NO. 70.

0 Virginia State Line
21 Rogersville
43 Greeneville
68 N. Carolina State Line

HIGHWAY NO. 71.

0 N. Carolina State Line
38 Sevierville
60 Maryville

HIGHWAY NO. 72.

0 N. Carolina State Line
34 Junction No. 33 (Near Maryville)

HIGHWAY NO. 73.

0 Maryville
20 Townsend
24 Elkmont
41 Gatlinburg (Junc.No.71)

HIGHWAY NO. 74.

28 N. Carolina State Line
0 Junction No. 39
5 Parksville
23 Ducktown
28 N. Carolina State Line

HIGHWAY NO. 75.

0 Newport
24 N. Carolina State Line

HIGHWAY NO. 76.

0 Adams
16 Junctions No. 12 and 112
20 Clarksville
51 Dover
89 Paris
99 Henry
106 McKenzie
122 Junction No. 77
127 Milan
133 Humboldt
152 Bells
164 Brownsville
189 Somerville
205 Moscow

HIGHWAY NO. 77.

0 Newbern
17 Dyer
24 Trenton
34 Junction No. 43
38 Milan
59 Huntingdon

HIGHWAY NO. 78.

0 Kentucky State Line
11 Tiptonville
22 Junction No. 79
28 Junction No. 103
36 Dyersburg

HIGHWAY NO. 79.

0 Mississippi River
10 Junction No. 78

HIGHWAY NO. 80.

0 Junction No. 25
28 Willette

HIGHWAY NO. 81.

0 Junction No. 26
10 Falls Branch
28 Jonesboro
37 Junction No. 107
40 Erwin

HIGHWAY NO. 82.

0 Shelbyville
16 Lynchburg

HIGHWAY NO. 83.

0 Cleveland
11 Georgetown

HIGHWAY

0 Sparta
23 Monte

HIGHWAY

0 Gainsb
22 Living

HIGHWAY

0 Collier
6 Missis

HIGHWAY

0 Hennin
15 Fulton

HIGHWAY

0 Halls
14 Hales

HIGHWAY

0 Dresd
14 Duked

HIGHWAY

0 Morle
15 Kento

HIGHWAY

0 Johns
8 Elizab
24 Johns

HIGHWAY

0 Rutle
12 Jeffer
22 Dandr

HIGHWAY

0 Gree
19 Junct

HIGHWAY

0 Junct
4 Press
8 Junct

HIGHWAY

0 Eaton
10 Loude

HIGHWAY

0 Frank
27 Junct
28 Murfr
53 Liber

HIGHWAY

0 Junct
18 Winch
37 Linco

HIGHWAY

0 Beans
5 Alaba

HIGHWAY NO. 84.
0 Sparta
28 Monterey

HIGHWAY NO. 85.
0 Gainsboro
22 Livingston

HIGHWAY NO. 86.
0 Collierville
6 Mississippi State Line

HIGHWAY NO. 87.
0 Henning (Junc. No. 3)
15 Fulton

HIGHWAY NO. 88.
0 Halls
14 Hales Point (Miss. River)

HIGHWAY NO. 89.
0 Dresden
14 Dukedom

HIGHWAY NO 90.
0 Morley (Junc. No. 9)
15 Kentucky State Line

HIGHWAY NO. 91.
0 Johnson City
8 Elizabethton
24 Johnson County Line

HIGHWAY NO. 92.
0 Rutledge
12 Jefferson City
22 Dandridge

HIGHWAY NO. 93.
0 Greeneville
19 Junction No. 81

HIGHWAY NO. 94.
0 Junction No. 70
4 Pressmen's Home
8 Junction No. 66

HIGHWAY NO. 95.
0 Eaton's X Roads (Rt. 1)
10 Loudon

HIGHWAY NO. 96.
0 Franklin
27 Junction No. 83
28 Murfreesboro
55 Liberty

HIGHWAY NO. 97.
0 Junction No. 2
18 Winchester
37 Lincoln County Line

HIGHWAY NO 97-S
0 Beans Creek
5 Alabama State Line

HIGHWAY NO. 98.
0 Leoma (Junc. No. 6)
14 Alabama State Line

HIGHWAY NO. 99.
0 Columbia
17 Hampshire

HIGHWAY NO. 100.
0 Bellevue (Junc. No. 1)
32 Bon Aqua
47 Centerville

HIGHWAY NO. 101.
0 Junction No. 30
7 Herbert Domain

HIGHWAY NO. 102.
0 Junction No. 1
3 Jefferson Pike

HIGHWAY NO. 103.
0 Junction No. 78
9 Mississippi River

HIGHWAY NO. 104.
0 Dyersburg
11 Gibson County Line

HIGHWAY NO. 105.
0 Henderson
12 Hardeman County Line

HIGHWAY NO. 106.
0 Nashville
78 Meriwether Lewis Monument

HIGHWAY NO. 107.
0 Junction No. 81
27 Greeneville

HIGHWAY NO. 108.
0 Junction No. 56
11 Palmer
25 Whitwell

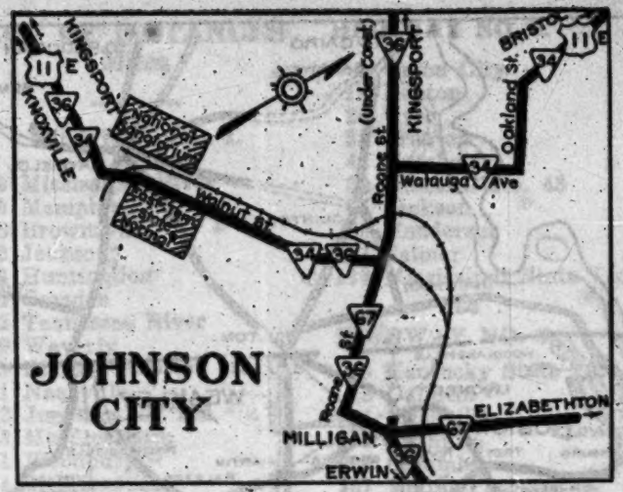
HIGHWAY NO. 109.
0 Gallatin
20 Mitchellville

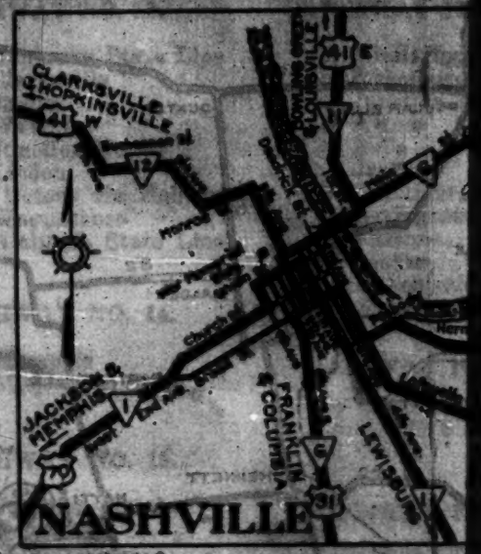
HIGHWAY NO. 110.
0 Junction No. 19
10 Taft
20 Ardmore

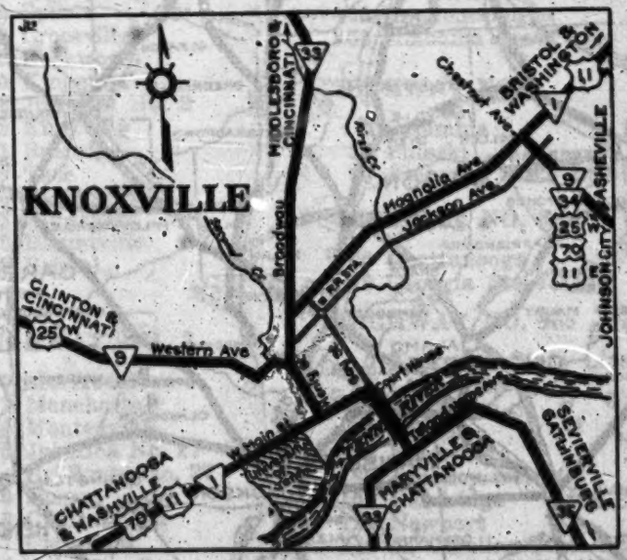
HIGHWAY NO. 111
0 Doyle
10 Spencer

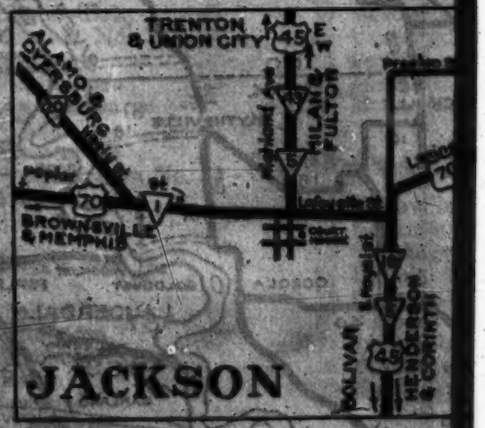
HIGHWAY NO. 112.
0 Nashville
41 Junctions No. 12 and 76

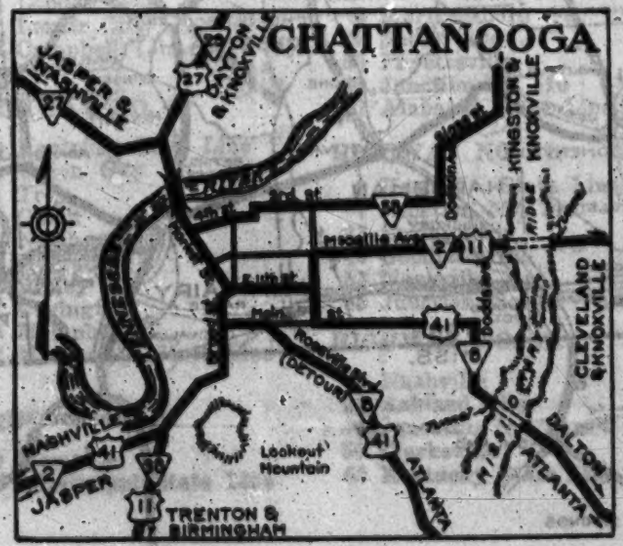
Visit the World War Exhibit, War Memorial Bldg., Nashville.











HIGHWAY MAP

OF

TENNESSEE

Showing the Designated Trunk Line System of State Highways and Detour Roads

Published and distributed by the

DEPARTMENT OF HIGHWAYS AND PUBLIC WORKS

NASHVILLE, TENNESSEE

November **1930**

R. H. BAKER, Commissioner

SUPREME COURT OF THE UNITED STATES.

No. 358.—October Term, 1930.

Interstate Transit, Inc.,
vs.
Dick Lindsey, County Court Clerk.

Appeal from the Supreme Court of Tennessee.

[April 13, 1931.]

Mr. Justice Brandeis delivered the opinion of the Court.

The Tennessee Act of 1927, c. 89, § 4, imposes upon concerns operating interstate motor busses on the highways of the State a privilege tax graduated according to carrying capacity. It is $500 a year for each vehicle seating more than twenty and less than thirty passengers. The tax for eight such busses was demanded of Interstate Transit, Inc., an Ohio corporation which operates, exclusively in interstate commerce, a line from Cincinnati, Ohio, to Atlanta, Georgia. The company made a quarterly payment under protest and brought this suit to recover the amount paid, on the ground that the statute as applied violates the commerce clause of the Federal Constitution. The trial court allowed recovery, but its judgment was reversed by the Supreme Court of the State. 161 Tenn. 56. The case is here on appeal.

While a State may not lay a tax on the privilege of engaging in interstate commerce, *Sprout* v. *South Bend*, 277 U. S. 163, it may impose even upon motor vehicles engaged exclusively in interstate commerce a charge, as compensation for the use of the public highways, which is a fair contribution to the cost of constructing and maintaining them and of regulating the traffic thereon. *Kane* v. *New Jersey*, 242 U. S. 160, 168-169; *Clark* v. *Poor*, 274 U. S. 554; *Sprout* v. *South Bend, supra*, pp. 169-170. As such a charge is a direct burden on interstate commerce, the tax cannot be sustained unless it appears affirmatively, in some way, that it is levied only as compensation for use of the highways or to defray the expense of regulating motor traffic. This may be indicated by the nature of the imposition, such as a mileage tax directly proportioned to the

use, *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245, or by the express allocation of the proceeds of the tax to highway purposes, as in *Clark* v. *Poor, supra*,[1] or otherwise. Where it is shown that the tax is so imposed, it will be sustained unless the taxpayer shows that it bears no reasonable relation to the privilege of using the highways or is discriminatory. *Hendrick* v. *Maryland*, 235 U. S. 610, 612; *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245, 250-252. Compare *Interstate Busses Corp.* v. *Holyoke Street Ry.*, 273 U. S. 45, 51. But the mere fact that the tax falls upon one who uses the highway is not enough to give it presumptive validity.

A detailed examination of the statute under which the tax here challenged was laid makes it clear that the charge was imposed not as compensation for the use of the highways but for the privilege of doing the interstate bus business. Chapter 89 of the Acts of 1927 deals with practically all of the taxes laid by the State, except those relating to highways. It is entitled "An Act to provide for General Revenue for the State of Tennessee and the counties and municipalities thereof, to be known as the General Revenue Bill." The scope of this statute conforms to the title. It consists of twenty-one sections. The first three impose general property, inheritance, and merchants' capital taxes. Section 4, under which the tax challenged is laid, declares "That each vocation, occupation and business hereinafter named in this section is hereby declared to be a privilege, and the rate of taxes on such privileges shall be as hereinafter fixed." Then follows a schedule occupying 53 pages, in which 160 businesses are arranged, in the main, alphabetically, and in which the several motor bus businesses have their appropriate places. This is followed by six additional sections which deal exclusively with similar privilege taxes. The remaining sections relate to enforcement.

The tax on interstate busses is of the same character as the tax laid for the privilege of engaging in every other line of business. The taxes for the several businesses range from $2.50 to $5000; and since they differ widely in amount even for the same

[1]The Ohio statute there involved declared that the taxes were laid, and were to be used only for, the maintenance and repair of highways and for the regulation of motor traffic. Ohio General Code, § 614-94, § 614-96. The "other purposes," referred to in the opinion, 274 U. S. at p. 557, were the general expenses of the state motor vehicle department as distinguished from expenditures specifically upon the highways.

business, appear to be graduated according to the assumed earning capacity. In most, the amount demanded increases with the population of the city, town, or district in which the business is carried on. For some a different basis of gauging probable earning power is adopted. On warehouses the tax is graduated according to storage capacity. On theatres it is graduated according to seating capacity. On the business of operating busses it likewise varies according to seating capacity. The latter tax is specified separately for interstate busses, for intrastate busses operating in more than one county, and for those operating in a single county. But this separation appears to be made solely because of the allocation of the proceeds of the tax.[2] For the rate of taxation is the same for each, and varies solely with the carrying capacity of the bus; there being steep increases from $50 a year for one carrying not more than five passengers to $750 for one carrying over thirty.[3]

The conclusion that the tax challenged is laid for the privilege of doing business and not as compensation for the use of the highways is confirmed by contrasting § 4 of the 1927 Act with those statutes which admittedly provide for defraying the cost of constructing and maintaining highways and regulating traffic thereon. The former declares specifically in connection with the privilege tax on interstate busses that the proceeds "shall go and belong exclusively to the General Funds of the State." On the other hand, in the legislation by which Tennessee has provided for defraying the cost of constructing and maintaining the state highways and regulating motor traffic, it has been the consistent practice to prescribe that monies raised for this purpose shall be segregated and go into the Highway Fund. The present system of motor regulations was inaugurated in 1915.[4] At the same

[2]Where an intrastate bus operates for more than half of its total mileage on a county maintained road, the Act provides that one-half of the tax shall be retained by the county for road purposes. But taxes collected from interstate buses are not so allocated.

[3]Four intermediate classifications are provided: $100 for buses carrying between five and ten passengers; $200 for one carrying between ten and fifteen; $350 for one carrying between fifteen and twenty; and the tax in suit, $500 for a bus carrying between twenty and thirty passengers.

[4]In 1915 an annual registration fee based upon seating capacity was required of all automobile owners. Pub. Acts 1915, c. 8, §§ 1, 5. In 1917 the fee was made dependent upon rated horsepower, and the use of the proceeds was limited to administrative expenses of the motor vehicle department and main-

session, the legislature created a State Highway Commission with power to construct and maintain highways.[5] In these statutes and in many later ones—prescribing additional fees for the registration and licensing of motor vehicles,[6] imposing gasoline taxes,[7] laying a one mill road tax,[8] and authorizing the issue of bonds for the construction of highways and bridges,[9]—the legislature provided that the proceeds of the fees, taxes, and bonds, and of the tolls collected on bridges, should be set apart as state highway and bridge funds to be expended by the Commission exclusively for the construction and maintenance of highways or bridges. The absence in § 4 of this provision, which characterizes almost every other Tennessee statute relating to the construction and maintenance of highways, or the regulation of motor vehicle traffic, is additional evidence that the present tax was not exacted for such purposes, but merely as a privilege tax on the carrying on of interstate business.

---

tenance of the highways. Pub. Acts 1917, c. 73, §§ 2, 7. Formal amendments were made in Pub. Acts 1919, c. 149, § 15; Pub. Acts 1921, c. 131; Pub. Acts 1923, c. 10, §1; c. 108, § 1; Pub. Acts 1929, c. 14, § 1. A very early Act had provided for the registration of all motor vehicles at a nominal fee of two dollars, and had established speed limits. Pub. Acts 1905, c. 173, § 1.

[5]Pub. Acts 1915, c. 100, §§ 1-11. This same statute first established a State Highway Fund to be accrued from registration fees and penalties, and to include federal aid grants. This fund was to be used solely for the maintenance of state highways. *Id.*, §§ 12, 14. See also Pub. Acts 1917, c. 16, § 2, c. 58, and c. 74, § 1, the last establishing a separate State Aid Road Fund; Pub. Acts 1919, c. 149, §§ 1-14, 26, reorganizing the State Highway Commission and repealing the 1915 Act; Pub. Acts 1923, c. 7, §§ 1, 33-35, reorganizing all State Departments and repealing the 1919 Act.

[6]See Note 4, *supra.*

[7]Pub. Acts 1923, c. 58, §§ 1, 12; as amended by Pub. Acts 1925, cc. 4, 13, 19, 20; Pub Acts 1929, c. 11, §§ 1, 2, c. 2, § 1, c. 124, § 1; Pub. Acts 1929, Extraordinary Sess., c. 28. See also Pub. Acts 1927, c. 22, establishing a Division of Motors and Motor Fuels and levying an additional tax on gasoline dealers to defray its expenses. Compare Williams *v.* Standard Oil Co., 278 U. S. 235. One-tenth of one per cent per gallon of the State Gasoline tax was, however, set aside as a Sinking Fund for the retirement of the Tennessee Great Smoky Mountain Park Bonds. Pub. Acts 1927, c. 54, § 15.

[8]Pub. Acts 1917, c. 74, §§ 1, 2; as amended by Pub. Acts 1919, c. 188; tax repealed, Pub. Acts 1923, c. 62.

[9]*E. g.*, Pub. Acts 1925, c. 72, § 1; Pub. Acts 1927, c. 1, § 5; *id.*, c. 6, § 4; *id.*, c. 37, §§ 6-7; *id.*, c. 83, §§ 1-2; Pub. Acts 1929, c. 5, §6; *id.*, c. 36, §§ 1-2; *id.*, c. 104, §§ 4, 6-7; *id.*, c. 112, §§ 4, 6-7; Pub. Acts 1929, Extraordinary Sess., c. 33.

It is suggested that a tax on busses graduated according to carrying capacity is common and is a reasonable measure of compensation for use of the highways. It is true that such a measure is often applied in taxing motor vehicles engaged in intrastate commerce.[10] Being free to levy occupation taxes, States may tax the privilege of doing an intrastate bus business without regard to whether the charge imposed represents merely a fair compensation for the use of their highways. Compare *Gundling* v. *Chicago*, 177 U. S. 183, 189. But since a State may demand of one carrying on an interstate bus business only fair compensation for what it gives, such imposition, although termed a tax, cannot be tested by standards which generally determine the validity of taxes. Being valid only if compensatory, the charge must be necessarily predicated upon the use made, or to be made, of the highways of the State. *Clark* v. *Poor, supra.* In the present act the amount of the tax is not dependent upon such use. It does not rise with an increase in mileage travelled, or even with the number of passengers actually carried on the highways of the State. Nor is it related to the degree of wear and tear incident to the use of motor vehicles of different sizes and weights, except insofar as this is indirectly affected by carrying capacity.[11] The tax is proportioned solely to the earning capacity of the vehicle. Accordingly, there is here no sufficient relation between the measure employed and the extent or manner of use, to justify holding that the tax was a charge made merely as compensation for the use of the highways by interstate busses. We need not therefore consider whether the tax exacted from this appellant is unreasonably large or unjustly discriminatory.

Reversed.

Mr. Justice McReynolds is of opinion that the judgment should be affirmed.

A true copy.

Test:

Clerk, Supreme Court, U. S.

---

[10]See Motor Vehicle Conference Committee, State Regulation of Motor Vehicle Common Carrier Business (1930).

[11]Compare *id.*, State Restrictions on Motor Vehicle Sizes, Weights, and Speeds (1931); Public Roads, Vol. 6, No. 8 (1925), pp. 165-68.